

1 FRED M. PLEVIN (SBN 126185)  
SANDRA L. MCDONOUGH (SBN 193308)  
2 ALBERT R. LIMBERG (SBN 211110)  
PAUL, PLEVIN, SULLIVAN &  
3 CONNAUGHTON LLP  
401 B Street, Tenth Floor  
4 San Diego, California 92101-4232  
Telephone: 619-237-5200  
5 Facsimile: 619-615-0700

6 AMY S. GONZALEZ (SBN 181745)  
SAN DIEGO COUNTY REGIONAL AIRPORT  
7 AUTHORITY  
3225 N. Harbor Drive  
8 San Diego, CA 92138  
Telephone: (619) 400-2425  
9 Facsimile: (619) 400-2428

10 Attorneys for Defendant  
11 SAN DIEGO COUNTY REGIONAL AIRPORT  
AUTHORITY

12  
13 UNITED STATES DISTRICT COURT  
14 SOUTHERN DISTRICT OF CALIFORNIA

15 JOSE HERNANDEZ,

16 Plaintiff,

17 v.

18 SAN DIEGO COUNTY  
REGIONAL AIRPORT  
19 AUTHORITY, a public entity; and  
DOES 1 through 12, inclusive,

20 Defendants.  
21

CASE NO.

NOTICE OF REMOVAL OF ACTION:  
UNDER 28 U.S.C. § 1442(B)  
(FEDERAL QUESTION)

**EXHIBITS 54-75**

22 ///

23 ///

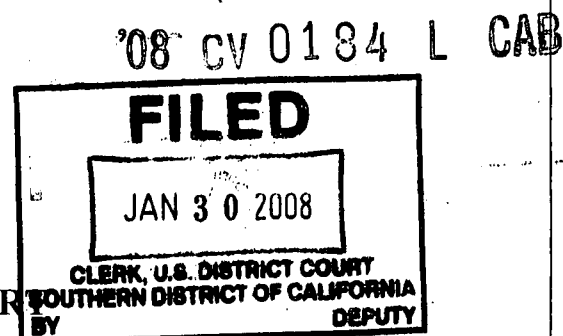
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**FILED**  
CIVIL BUSINESS OFFICE  
CENTRAL DIVISION

SEP 07 2007

CLERK - SUPERIOR COURT  
SAN DIEGO COUNTY, CA

FRED M. PLEVIN (SBN 126185)  
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**PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP**  
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AUTHORITY**  
3225 N. Harbor Drive  
San Diego, CA 92138  
Telephone: (619) 400-2425  
Facsimile: (619) 400-2428

Attorneys for Defendant  
**SAN DIEGO COUNTY REGIONAL AIRPORT  
AUTHORITY**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO**

**JOSE HERNANDEZ,**

Plaintiff,

v.

**SAN DIEGO COUNTY REGIONAL  
AIRPORT AUTHORITY, a public entity;  
and DOES 1 through 12, inclusive,**

Defendants.

CASE NO. GIC871979

**DEFENDANT SAN DIEGO COUNTY  
REGIONAL AIRPORT AUTHORITY'S  
NOTICE OF ERRATA IN SUPPORT OF ITS  
MOTION FOR SUMMARY JUDGMENT OR,  
IN THE ALTERNATIVE, SUMMARY  
ADJUDICATION**

Date: November 16, 2007  
Time: 1:30 p.m.  
Dept: 75  
Judge: Hon. Richard E. Strauss  
Complaint Filed: September 1, 2006  
Trial Date: January 4, 2008

**EXEMPT FROM FEES  
GOVT. CODE § 6103**

**TO PLAINTIFF JOSE HERNANDEZ AND HIS ATTORNEYS OF RECORD:**

Defendant San Diego County Regional Airport Authority hereby submits the following  
notice of errata in support of its motion for summary judgment or, in the alternative, summary

PAUL, PLEVIN,  
SULLIVAN &  
CONNAUGHTON LLP

NOTICE OF ERRATA IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT

1 adjudication. Fact numbers 12, 51 and 52 in the separate statement filed in support of the motion  
 2 contained inadvertent errors and should have read as follows:

Undisputed Material Fact	Evidence
12. Hernandez alleges that he was advised to keep the investigation confidential.	Hernandez 840:12-15 [Exh. 2]; Second Amended Complaint p. 11, lines 26-28.

6 **Adjudication No. 7: Hernandez' First Cause of Action under Labor Code section 1102.5(a)**  
 7 **fails as a matter of law because Hernandez has not identified a rule, regulation, or policy**  
 8 **made, adopted or enforced by the Authority that prevents an employee from disclosing**  
 9 **information to a governmental agency.**

Undisputed Material Fact	Evidence
51. Hernandez alleges that he was advised to keep the investigation confidential.	Hernandez 840:12-15 [Exh. 2]; Second Amended Complaint p. 11, lines 26-28.

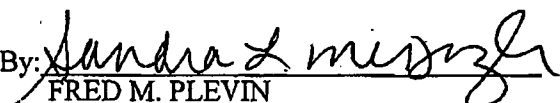
12 **Adjudication No. 8: Hernandez' First Cause of Action under Labor Code section 1102.5(a)**  
 13 **fails as a matter of law because any instructions regarding confidentiality were made to**  
 14 **implement the protection of the attorney-client privilege (See Labor Code section 1102.5(g)).**

Undisputed Material Fact	Evidence
52. Mr. Swan advised Hernandez that he should keep the interview confidential because the investigation was an attorney-client privileged investigation.	Swan 2:26-28.

18 The above changes are incorporated into the amended separate statement filed herewith.

20 Dated: September 7, 2007

PAUL, PLEVIN, SULLIVAN &  
 CONNAUGHTON LLP

22 By:   
 23 FRED M. PLEVIN  
 SANDRA L. MCDONOUGH  
 24 ALBERT R. LIMBERG  
 Attorneys for Defendant  
 25 SAN DIEGO COUNTY REGIONAL  
 26 AIRPORT AUTHORITY

**PROOF OF PERSONAL SERVICE**

I, the undersigned, certify and declare that I am a citizen of the United States, over the age of eighteen, employed in the County of San Diego, State of California, and not a party to the within-entitled action. My business address is 4665 Park Blvd., San Diego, CA 92116.

On \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m., I served a true copy of the within:

- **DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT  
AUTHORITY'S NOTICE OF ERRATA IN SUPPORT OF ITS MOTION  
FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY  
ADJUDICATION;**
- **DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT  
AUTHORITY'S AMENDED SEPARATE STATEMENT OF UNDISPUTED  
MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION**

by delivering for personal service to the following:

Cathryn Chinn, Esq.  
1901 First Avenue, Suite F  
San Diego, CA 92101  
Tel: 619-295-4190 / Fax: 619-295-9529  
**Attorney for Plaintiff Jose Hernandez**

I hereby certify that I am employed by Diversified Legal Services, at whose direction the personal service was made.

Executed September 7, 2007, at San Diego, California.

  
\_\_\_\_\_  
DIVERSIFIED LEGAL SERVICES  
MESSENGER

<b>GREG A. KLAWITTER</b> <b>PAUL, PLEVIN, SULLIVAN &amp; CONNAUGH, LLP</b> <b>401 B STREET TENTH FLOOR SAN DIEGO, CA 92101</b>					<b>SBN: 222748</b>		<b>FOR COURT USE ONLY</b>		
TELEPHONE NO.: (619) 237-5200 E-MAIL ADDRESS (Optional):					FAX NO. (Optional): (619) 615-0700				
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 330 WEST BROADWAY MAILING ADDRESS: CITY AND ZIP CODE: SAN DIEGO, CA 92101 BRANCH NAME: SAN DIEGO									
PLAINTIFF (name each): <b>SDCRAA</b> DEFENDANT (name each): <b>HERNANDEZ</b>						CASE NUMBER: <b>GIC 871979</b>			
<b>PROOF OF HAND DELIVERY</b>		HEARING DATE:		DAY:		TIME:		DEPT.:	
Ref No. or File No.: <b>MARTHA/SDCRAA</b>									

AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION, AND I SERVED COPIES OF THE:

**NOTICE OF ERRATA; AMENDED SEPARATE STATEMENT**

NAME OF ATTORNEY: **CATHRYN CHINN**

DELIVERED TO: **PETER FREEZEN - AUTHORIZED TO ACCEPT - ATTORNEY**


DATE & TIME OF DELIVERY: **09/07/2007**  
**04:45 pm**

ADDRESS, CITY, AND STATE: **1901 FIRST AVE, SUITE 400**  
**SAN DIEGO, CA 92101**

**MANNER OF SERVICE:**

Delivery to Law Office: Service was made by delivery to the attorney's office; or by leaving the document(s) with his clerk over the age of 18 therein; or with a person having charge thereof; or if there was no such person in the office, by leaving them between the hours of nine in the morning and five in the afternoon, in a conspicuous place in the office. [CCP §1011(1)]

Fee for Service: **42.50**


 County: **SAN DIEGO**  
 Registration No.: **1129**  
**DIVERSIFIED LEGAL SERVICES, INC.**  
**4665 PARK BLVD**  
**SAN DIEGO, CA 92116**  
**(619) 260-8224**

I declare under penalty of perjury under the laws of the State of California that the foregoing information contained in the return of service and statement of service fees is true and correct and that this declaration was executed on **September 19, 2007**.

Signature: \_\_\_\_\_

**ERIC LOOMIS**

**PROOF OF HAND DELIVERY**



# Diversified Legal Services, Inc.

Order #: 99255

4665 Park Blvd, San Diego, CA 92116 Fed ID# 33-0524333

Tel: (619) 260-8224 e-mail: kevin@dlsusa.com Fax: (619) 260-0316

Date Received: September 19, 2007

Acct. No: 3375

Client: PAUL, PLEVIN, SULLIVAN &amp; CONNAUGHTON LLP

401 B STREET

(619) 237-5200

SAN DIEGO, CA 92101

Your File No: MARTHA/SDCRAA

Attorney: GREG A. KLAUITTER

Bar No: 222746

**\*\*TODAY\*\***

Case No: GIC 871979

Court: SAN DIEGO COUNTY SUPERIOR COURT CENTRAL

Plaintiff: SDCRAA

vs Defendant: HERNANDEZ

Depo/Hearing Date:

Due Date: September 7, 2007

Served: CATHRYN CHINN

Server: None assigned

Business Address:

Home Address:

1901 FIRST AVE, SUITE 400  
SAN DIEGO, CA 92101

Documents:

NOTICE OF ERRATA; AMENDED SEPARATE STATEMENT

Comments:

**RETURN  
TO ATTORNEY**

DATE	A.M.	P.M.	Due Diligence	Billing Code
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				SVCDT
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				OCRUSH
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				BAD
				BADOUT

Served At:

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Residence

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Business

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Other

Person Served:

Title/Relationship:

Description:

Age

Race

Sex

Eyes

Hair

Ht.

Wt.

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Substitute

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Posted/Mailed

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Other

Date:

A.M.

P.M.

Server/Reg.#:

Order#: 99255/GWORK





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9  
 10 Attorneys for Defendant  
 SAN DIEGO COUNTY REGIONAL AIRPORT  
 11 AUTHORITY

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 13 COUNTY OF SAN DIEGO

14 JOSE HERNANDEZ,  
 15 Plaintiff,

16 v.

17 SAN DIEGO COUNTY REGIONAL  
 18 AIRPORT AUTHORITY, a public entity;  
 and DOES 1 through 12, inclusive,

19 Defendants.

CASE NO. GIC871979

DEFENDANT SAN DIEGO COUNTY  
 REGIONAL AIRPORT AUTHORITY'S  
AMENDED SEPARATE STATEMENT OF  
UNDISPUTED MATERIAL FACTS IN  
SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT OR, IN THE ALTERNATIVE,  
SUMMARY ADJUDICATION

Date: November 16, 2007  
 Time: 1:30 p.m.  
 Dept: 75  
 Judge: Hon. Richard E. Strauss  
 Complaint Filed: September 1, 2006  
 Trial Date: January 4, 2008

EXEMPT FROM FEES  
 GOVT. CODE § 6103

25 TO PLAINTIFF JOSE HERNANDEZ AND HIS ATTORNEYS OF RECORD:

26 Defendant San Diego County Regional Airport Authority (hereinafter referred to as "the  
 27 Authority") submits the following Amended Separate Statement of Undisputed Material Facts in

28  
 PAUL, PLEVIN,  
 SULLIVAN &  
 CONNAUGHTON LLP

AMENDED SEPARATE STATEMENT IN  
 SUPPORT OF SUMMARY JUDGMENT MOTION

1 support of its Motion for Summary Judgment as to plaintiff Jose Hernandez' Second Amended  
2 Complaint:

Undisputed Material Fact	Evidence
3 4 1. Jose Hernandez became the Director of 5 Landside Operations for defendant San 6 Diego County Regional Airport Authority 7 (the "Authority") on or about October 8 2003.	Hernandez Depo. 93:16-25 and 114:25-115:14 [Exh. 1]. Exhibit 16.
9 10 2. Article 2, Part 2.0, Section 2.10(b) of the 11 Authority's Ethics Code provides in part: 12 <u>Restrictions on Benefits</u> 13 (1) No Board member or employee of the 14 Authority shall request a benefit from any 15 person or entity or accept any benefit 16 intended to influence official duties. 17 (2) No Board member or employee of the 18 Authority shall accept anything of value 19 from anyone, other than the Authority or 20 another Board member or employee, for 21 doing his or her job. 22 (3) No Board member or employee of the 23 Authority shall accept benefits aggregating 24 more than one-half (1/2) the amount of 25 gifts permitted under the California 26 Political Reform Act in any calendar year 27 from any single source: 28 (A) That the Board member or employee knows or should know is doing business with the Authority or intends to do business with the Authority or has done business with the Authority during the previous 12 months; or (B) That the Board member or employee knows or should know has or is seeking a license, permit, grant or benefit from the Authority; or (C) That the Board member or employee knows or should know is an agent (whether compensated or not) of any person or entity described in Subsections (A) or (B)	Exhibit 3, pp. 12-13.
3. In approximately October or November	Bowens Dec. p. 2, lines 7-19 (hereinafter noted

1	2005, two Authority employees advised Thella Bowens that they believed that Hernandez was behaving unethically and receiving benefits from the Authority's vendors.	as "Page:Line Numbers")
2		
3		
4	4. In November 2005, Bowens asked the Authority's Vice President of Administration, Jeffrey Woodson, to have an outside investigator conduct an investigation into the allegations that Hernandez had received benefits from the Authority's vendors.	Woodson Dec. 2:5-8; Bowens Dec. 2:20-22
5		
6		
7		
8	5. Woodson approved the retention of Luce, Forward, Hamilton & Scripps ("Luce Forward") to conduct an investigation into the allegations made regarding Hernandez receiving benefits from the Authority's vendors.	Swan Dec. 2:9-12; Woodson Dec. 2:9-13
9		
10		
11		
12	6. Edward Patrick Swan, Jr. of Luce Forward conducted an investigation, with assistance from John Gamberzky, regarding the allegations that Hernandez received benefits from the Authority's vendors.	Swan Dec. 3:1-10.
13		
14		
15	7. Hernandez admits that he received four non-revenue tickets from Hawaiian Airlines in 2004, and that he knew Hawaiian Airlines was doing business with the Authority at the time he received the tickets.	Swan Dec. 3:11-12; Hernandez Depo. 198:8-200:17 and 280:1-14 [Exh. 1]
16		
17		
18		
19	8. Hernandez admits that he received at least two buddy passes from Southwest Airlines in 2004 for his children, and that he knew Southwest Airlines was doing business with the Authority at the time he received the tickets.	Hernandez Depo. 191:8-20 and 281:6-12 [Exh. 1].
20		
21		
22	9. Mr. Swan concluded in his investigation that there was sufficient evidence that Hernandez had accepted benefits from Authority vendors and contractors. He also concluded that there was sufficient evidence that Hernandez had violated Section 2.10 of the Authority's Ethics Code.	Swan Dec. 4:6-14; Exhibit 4, pp. 2 and 20-21; Exh. 3, pp. 12-13.
23		
24		
25		
26		
27	10. Mr. Swan prepared a written report of his findings and sent them to Thella Bowens on or about January 19, 2006.	Swan Dec. 3:25-4:2; Exhibit 4
28		

1 11. After reviewing the findings contained in  
2 Mr. Swan's January 19, 2006 report, and  
3 upon the recommendation of Jeffrey  
4 Woodson and the Authority's Director of  
5 Human Resources, Diane Richards,  
6 Bowens determined that Hernandez' employment should be terminated because it appeared that he had accepted benefits in violation of Section 2.10 of the Authority's Ethics Code.

Bowens Dec. 3:1-10; Exh. 3, pp. 12-13 [Ethics Code]; Woodson Dec. 2:25-3:4

7 12. Hernandez alleges that he was advised to keep the investigation confidential.

Hernandez 840:12-15 [Exh. 2]; Second Amended Complaint p. 11, lines 26-28.

8  
9 In the alternative, the Authority submits the following Separate Statement of Undisputed  
10 Material Facts in Support of Its Motion for Summary Adjudication in regards to each cause of  
11 action and claim in plaintiff Jose Hernandez' Second Amended Complaint:

12 **Adjudication No. 1: Hernandez' First Cause of Action fails as a matter of law because the**  
13 **Authority's Codes are not a Federal or State law, rule or regulation.**

Undisputed Material Fact	Evidence
13. The Second Amended Complaint alleges that Hernandez disclosed violations of the Authority's Codes.	Second Amended Complaint 7:26-27; 8:17-19; 9:7-8; 10:11-14
14. The Authority's Code contains administrative, regulatory and revenue ordinances of the San Diego County Regional Airport Authority.	Exhibit 7 [Section 1.01 (a)] of the Authority's code
15. The Authority is a local government entity.	Public Utilities Code section 170002

21  
22  
23 **Adjudication No. 2: Hernandez' First Cause of Action fails as a matter of law because**  
24 **Hernandez could not have had a reasonable belief that he was disclosing activity made unlawful by a federal or state law, rule or regulation.**

Undisputed Material Fact	Evidence
16. Hernandez alleges that he disclosed that	Hernandez Depo. 393:6-17 [Exh. 1].

1	the Authority overpaid for the General Dynamics Lease. <sup>1</sup>	
2		
3	17. The terms of the General Dynamics Lease are set by statute.	See Public Utilities Code section 170056(f)(1); Hernandez Depo. 391:14-392:24 and 397:8-11 [Exh. 1].
4		
5	18. Hernandez alleges that he disclosed that the Authority overpaid for the Teledyne Ryan lease.	Hernandez Depo. 410:3-11 and 408:3-25 [Exh. 1].
6		
7	19. Hernandez alleges that he disclosed that unless the Authority received space from Host, it would not be able to comply with the ADA regulations on the restroom project, and thus the project was held up.	Hernandez Depo. 343:16-344:4 and 357:10-358:6 [Exh. 1]
8		
9		
10	20. Hernandez alleges that he disclosed that LPi underbid the Authority and that LPi double-billed workers' compensation.	Hernandez Depo. 521:3-20 [Exh. 1]
11		

12 **Adjudication No. 3: Hernandez' First Cause of Action fails as a matter of law because there**  
 13 **is no causal connection between Hernandez' alleged protected activities and his termination**  
 14 **because the disclosures were too remote in time.**

15	<b>Undisputed Material Fact</b>	<b>Evidence</b>
16	21. Hernandez first made the disclosure regarding the restroom project in 2003 or 2004.	Hernandez Depo. 357:19-24 [Exh. 1].
17		
18	22. Hernandez first made the disclosure regarding the General Dynamics Lease in approximately 2003.	Hernandez 393:1-24 [made the disclosure prior to the ratification of the lease]; Hernandez 396:9-16 [original discussions were as the terms of the agreement were being discussed with the Port]; Hernandez 386:18-22 [General Dynamics' lease was negotiated around the time that the Authority split from the Port]
19		
20		
21		
22	23. Hernandez first made the disclosure regarding the Teledyne Ryan Lease in late 2003 or 2004.	Hernandez 410:3-16 [Hernandez disclosed to Sexton immediately as they began to make the designs for the SAN Park project]; Hernandez 408:3-14 [developed the design documents for the SAN Park project in late 2003 or 2004]
23		
24		
25		

26 <sup>1</sup> The Authority does not admit that Hernandez made any disclosures, or that he engaged in any protected  
 27 activities. However, for purposes of this motion only, the Authority will not dispute the content of  
 28 Hernandez' alleged disclosures as set forth in any admissible evidence contained in Hernandez' deposition.

24. Hernandez first made the disclosure regarding LPi's expenses in 2004.	Hernandez 493:24-495:15 [Hernandez made his first disclosure at the three-month or six-month submittal]; Sexton Dec. 3:15-17 [the LPi contract began in January 2004]
25. The investigation into alleged benefits received by Hernandez began in approximately November 2005.	Bowens Dec. 2:7-22; Woodson Dec. 2:5-8.
26. Hernandez' employment with the Authority ended in February 2006.	Hernandez Depo. 114:19-24 [Exh. 1].

**Adjudication No. 4: Hernandez' First Cause of Action fails as a matter of law because there is no causal connection between Hernandez' alleged protected activities and his termination because the decisionmaker was not aware of the protected activities.**

Undisputed Material Fact	Evidence
27. Thella Bowens made the decision to terminate Hernandez' employment.	Bowens Dec. 3:1-10
28. Bowens was unaware of any of Hernandez' alleged protected activities.	Bowens Dec. 3:18-4:8

**Adjudication No. 5: Hernandez' First Cause of Action fails as a matter of law because the Authority had a legitimate non-retaliatory business reason for terminating Hernandez' employment.**

Undisputed Material Fact	Evidence
29. Jose Hernandez became the Director of Landside Operations for defendant San Diego County Regional Airport Authority (the "Authority") on or about October 2003.	Hernandez Depo. 93:16-25 and 114:25-115:14 [Exh. 1]. Exhibit 16.
30. Article 2, Part 2.0, Section 2.10(b) of the Authority's Ethics Code provides in part:  <u>Restrictions on Benefits</u>  (1) No Board member or employee of the Authority shall request a benefit from any person or entity or accept any benefit intended to influence official duties.  (2) No Board member or employee of the Authority shall accept anything of value from anyone, other than the Authority or	Exhibit 3, pp. 12-13.



1	another Board member or employee, for doing his or her job.	
2	(3) No Board member or employee of the	
3	Authority shall accept benefits aggregating	
4	more than one-half (1/2) the amount of	
5	gifts permitted under the California	
6	Political Reform Act in any calendar year	
7	from any single source:	
8	(A) That the Board member or	
9	employee knows or should know is	
10	doing business with the Authority or	
11	intends to do business with the	
12	Authority or has done business with	
13	the Authority during the previous 12	
14	months; or	
15	(B) That the Board member or	
16	employee knows or should know has	
17	or is seeking a license, permit, grant or	
18	benefit from the Authority; or	
19	(C) That the Board member or	
20	employee knows or should know is an	
21	agent (whether compensated or not) of	
22	any person or entity described in	
23	Subsections (A) or (B)	
24	31. In approximately October or November	Bowens Dec. p. 2, lines 7-19 (hereinafter noted
25	2005, two Authority employees advised	as "Page:Line Numbers")
26	Thella Bowens that they believed that	
27	Hernandez was behaving unethically and	
28	receiving benefits from the Authority's	
	vendors.	
	32. In November 2005, Bowens asked the	Woodson Dec. 2:5-8; Bowens Dec. 2:20-22
	Authority's Vice President of	
	Administration, Jeffrey Woodson, to have	
	an outside investigator conduct an	
	investigation into the allegations that	
	Hernandez had received benefits from the	
	Authority's vendors.	
	33. Woodson approved the retention of Luce,	Swan Dec. 2:9-12; Woodson Dec. 2:9-13
	Forward, Hamilton & Scripps ("Luce	
	Forward") to conduct an investigation into	
	the allegations made regarding Hernandez	
	receiving benefits from the Authority's	
	vendors.	
	34. Edward Patrick Swan, Jr. of Luce Forward	Swan Dec. 3:1-10.
	conducted an investigation, with	
	assistance from John Gamberzky,	
	regarding the allegations that Hernandez	

1	received benefits from the Authority's vendors.	
2		
3	35. Hernandez admits that he received four non-revenue tickets from Hawaiian Airlines in 2004, and that he knew Hawaiian Airlines was doing business with the Authority at the time he received the tickets.	Swan Dec. 3:11-12; Hernandez Depo. 198:8-200:17 and 280:1-14 [Exh. 1]
4		
5		
6	36. Hernandez admits that he received at least two buddy passes from Southwest Airlines in 2004 for his children, and that he knew Southwest Airlines was doing business with the Authority at the time he received the tickets.	Hernandez Depo. 191:8-20 and 281:6-12 [Exh. 1].
7		
8		
9		
10	37. Mr. Swan concluded in his investigation that there was sufficient evidence that Hernandez had accepted benefits from Authority vendors and contractors. He also concluded that there was sufficient evidence that Hernandez had violated Section 2.10 of the Authority's Ethics Code.	Swan Dec. 4:6-14; Exhibit 4, pp. 2 and 20-21; Exh. 3, pp. 12-13.
11		
12		
13		
14	38. Mr. Swan prepared a written report of his findings and sent them to Thella Bowens on or about January 19, 2006.	Swan Dec. 3:25-4:2; Exhibit 4
15		
16	39. After reviewing the findings contained in Mr. Swan's January 19, 2006 report, and upon the recommendation of Jeffrey Woodson and the Authority's Director of Human Resources, Diane Richards, Bowens determined that Hernandez' employment should be terminated because it appeared that he had accepted benefits in violation of Section 2.10 of the Authority's Ethics Code.	Bowens Dec. 3:1-10; Exh. 3, pp. 12-13 [Ethics Code]; Woodson Dec. 2:25-3:4
17		
18		
19		
20		
21		

**Adjudication No. 6: Hernandez' First Cause of Action fails as a matter of law because he has no evidence of pretext.**

Undisputed Material Fact	Evidence
40. Jose Hernandez became the Director of Landside Operations for defendant San Diego County Regional Airport Authority (the "Authority") on or about October 2003.	Hernandez Depo. 93:16-25 and 114:25-115:14 [Exh. 1]. Exhibit 16.



1 41. Article 2, Part 2.0, Section 2.10(b) of the  
2 Authority's Ethics Code provides in part:

Exhibit 3, pp. 12-13.

3 Restrictions on Benefits

4 (1) No Board member or employee of the  
5 Authority shall request a benefit from any  
6 person or entity or accept any benefit  
7 intended to influence official duties.

8 (2) No Board member or employee of the  
9 Authority shall accept anything of value  
10 from anyone, other than the Authority or  
11 another Board member or employee, for  
12 doing his or her job.

13 (3) No Board member or employee of the  
14 Authority shall accept benefits aggregating  
15 more than one-half (1/2) the amount of  
16 gifts permitted under the California  
17 Political Reform Act in any calendar year  
18 from any single source:

19 (A) That the Board member or  
20 employee knows or should know is  
21 doing business with the Authority or  
22 intends to do business with the  
23 Authority or has done business with  
24 the Authority during the previous 12  
25 months; or

26 (B) That the Board member or  
27 employee knows or should know has  
28 or is seeking a license, permit, grant or  
benefit from the Authority; or

(C) That the Board member or  
employee knows or should know is an  
agent (whether compensated or not) of  
any person or entity described in  
Subsections (A) or (B)

42. In approximately October or November  
2005, two Authority employees advised  
Thella Bowens that they believed that  
Hernandez was behaving unethically and  
receiving benefits from the Authority's  
vendors.

Bowens Dec. p. 2, lines 7-19 (hereinafter noted  
as "Page:Line Numbers")

43. In November 2005, Bowens asked the  
Authority's Vice President of  
Administration, Jeffrey Woodson, to have  
an outside investigator conduct an  
investigation into the allegations that

Woodson Dec. 2:5-8; Bowens Dec. 2:20-22

1	Hernandez had received benefits from the Authority's vendors.	
2		
3	44. Woodson approved the retention of Luce, Forward, Hamilton & Scripps ("Luce Forward") to conduct an investigation into the allegations made regarding Hernandez receiving benefits from the Authority's vendors.	Swan Dec. 2:9-12; Woodson Dec. 2:9-13
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5		
6	45. Edward Patrick Swan, Jr. of Luce Forward conducted an investigation, with assistance from John Gamberzky, regarding the allegations that Hernandez received benefits from the Authority's vendors.	Swan Dec. 3:1-10.
7		
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9		
10	46. Hernandez admits that he received four non-revenue tickets from Hawaiian Airlines in 2004, and that he knew Hawaiian Airlines was doing business with the Authority at the time he received the tickets.	Swan Dec. 3:11-12; Hernandez Depo. 198:8-200:17 and 280:1-14 [Exh. 1]
11		
12		
13	47. Hernandez admits that he received at least two buddy passes from Southwest Airlines in 2004 for his children, and that he knew Southwest Airlines was doing business with the Authority at the time he received the tickets.	Hernandez Depo. 191:8-20 and 281:6-12 [Exh. 1].
14		
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16		
17	48. Mr. Swan concluded in his investigation that there was sufficient evidence that Hernandez had accepted benefits from Authority vendors and contractors. He also concluded that there was sufficient evidence that Hernandez had violated Section 2.10 of the Authority's Ethics Code.	Swan Dec. 4:6-14; Exhibit 4, pp. 2 and 20-21; Exh. 3, pp. 12-13.
18		
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20		
21	49. Mr. Swan prepared a written report of his findings and sent them to Thella Bowens on or about January 19, 2006.	Swan Dec. 3:25-4:2; Exhibit 4
22		
23	50. After reviewing the findings contained in Mr. Swan's January 19, 2006 report, and upon the recommendation of Jeffrey Woodson and the Authority's Director of Human Resources, Diane Richards, Bowens determined that Hernandez' employment should be terminated because it appeared that he had accepted benefits in violation of Section 2.10 of the Authority's Ethics Code.	Bowens Dec. 3:1-10; Exh. 3, pp. 12-13 [Ethics Code]; Woodson Dec. 2:25-3:4
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**Adjudication No. 7: Hernandez' First Cause of Action under Labor Code section 1102.5(a) fails as a matter of law because Hernandez has not identified a rule, regulation, or policy made, adopted or enforced by the Authority that prevents an employee from disclosing information to a governmental agency.**

Undisputed Material Fact	Evidence
51. Hernandez alleges that he was advised to keep the investigation confidential.	Hernandez 840:12-15 [Exh. 2]; Second Amended Complaint p. 11, lines 26-28.

**Adjudication No. 8: Hernandez' First Cause of Action under Labor Code section 1102.5(a) fails as a matter of law because any instructions regarding confidentiality were made to implement the protection of the attorney-client privilege (See Labor Code section 1102.5(g)).**

Undisputed Material Fact	Evidence
52. Mr. Swan advised Hernandez that he should keep the interview confidential because the investigation was an attorney-client privileged investigation.	Swan 2:26-28.

**Adjudication No. 9: Hernandez' First Cause of Action fails as a matter of law under Labor Code section 1102.5(c) because Hernandez did not refuse to participate in any unlawful activity**

Undisputed Material Fact	Evidence
53. Hernandez did not refuse to participate in any activity because he thought it was unlawful or illegal.	Hernandez Depo. 891:5-15 [Exh. 1].)

**Adjudication No. 10: The Authority is immune from Hernandez' Labor Code section 1102.5 cause of action under Government Code section 821.6**

Undisputed Material Fact	Evidence
54. Hernandez alleges harm in his Second Amended Complaint arising out of the Authority's investigation of his activities and his resulting termination.	See Second Amended Complaint generally, including paragraphs 23-30.
55. In November 2005, Bowens asked the Authority's Vice President of Administration, Jeffrey Woodson, to have an outside investigator conduct an investigation into the allegations that Hernandez had received benefits from the Authority's vendors.	Woodson Dec. 2:5-8; Bowens Dec. 2:20-22

1	56. Woodson approved the retention of Luce, Forward, Hamilton & Scripps ("Luce Forward") to conduct an investigation into the allegations made regarding Hernandez receiving benefits from the Authority's vendors.	Swan Dec. 2:9-12; Woodson Dec. 2:9-13
2		
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5	57. Edward Patrick Swan, Jr. of Luce Forward conducted an investigation, with assistance from John Gamberzky, regarding the allegations that Hernandez received benefits from the Authority's vendors.	Swan Dec. 3:1-10.
6		
7		
8	58. Mr. Swan concluded in his investigation that there was sufficient evidence that Hernandez had accepted benefits from Authority vendors and contractors. He also concluded that there was sufficient evidence that Hernandez had violated Section 2.10 of the Authority's Ethics Code.	Swan Dec. 4:6-14; Exhibit 4, pp. 2 and 20-21; Exh. 3, pp. 12-13.
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13	59. Mr. Swan prepared a written report of his findings and sent them to Thella Bowens on or about January 19, 2006.	Swan Dec. 3:25-4:2; Exhibit 4
14		
15	60. After reviewing the findings contained in Mr. Swan's January 19, 2006 report, and upon the recommendation of Jeffrey Woodson and the Authority's Director of Human Resources, Diane Richards, Bowens determined that Hernandez' employment should be terminated because it appeared that he had accepted benefits in violation of Section 2.10 of the Authority's Ethics Code.	Bowens Dec. 3:1-10; Exh. 3, pp. 12-13 [Ethics Code]; Woodson Dec. 2:25-3:4
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**Adjudication No. 11: This court lacks jurisdiction over Hernandez' Labor Code section 1102.5 cause of action because he failed to exhaust his administrative remedies under Labor Code sections 98.6 and 98.7**

23	<b>Undisputed Material Fact</b>	<b>Evidence</b>
24		
25	61. Hernandez has not alleged that he filed a claim with the Labor Commissioner.	See Second Amended Complaint.
26		
27		
28		

**GENERAL DYNAMICS DISCLOSURE:<sup>2</sup>**

**Adjudication No. 12: Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the General Dynamics' lease, fails as a matter of law because Hernandez could not have had a reasonable belief that the General Dynamics' lease was unlawful.**

Undisputed Material Fact	Evidence
62. Hernandez alleges that he disclosed that the Authority overpaid for the General Dynamics Lease.	Hernandez Depo. 393:6-17 [Exh. 1].
63. The terms of the General Dynamics Lease are set by statute.	See Public Utilities Code section 170056(f)(1); Hernandez Depo. 391:14-392:24 and 397:8-11 [Exh. 1].

**Adjudication No. 13: Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the General Dynamics' lease, fails as a matter of law because Hernandez has not identified a state or federal statute, rule or regulation of which he disclosed a violation.**

Undisputed Material Fact	Evidence
64. Hernandez alleges that he disclosed that the Authority overpaid for the General Dynamics Lease.	Hernandez Depo. 393:6-17 [Exh. 1].
65. The terms of the General Dynamics Lease are set by statute.	See Public Utilities Code section 170056(f)(1); Hernandez Depo. 391:14-392:24 and 397:8-11 [Exh. 1].

**Adjudication No. 14: Hernandez' First Cause of Action fails as matter of law, insofar as it is based on any alleged disclosure regarding the General Dynamics' lease, because there is no causal connection between his alleged protected activity and his termination.**

Undisputed Material Fact	Evidence
66. Hernandez first made the disclosure regarding the General Dynamics Lease in	Hernandez 393:1-24 [made the disclosure prior to the ratification of the lease]; Hernandez

<sup>2</sup> For summary adjudication purposes, separate allegedly wrongful acts give rise to separate causes of action - whether or not they are pleaded in the same or separate counts. (*Lillenthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1854-1855.) Accordingly, a motion may be made and granted on the separate allegations - even if the pleader has chosen to combine the claim with other counts within the same numbered cause of action. (*Ibid.*) It is thus proper to adjudicate each of these "disclosures" separately. If the court grants any one of Adjudications 1 through 6 or 10 through 11, then the Court does not need to address Adjudications 12-24, which simply seek to separately adjudicate each alleged protected activity.



1 approximately 2003.	396:9-16 [original discussions were as the terms of the agreement were being discussed with the Port]; Hernandez 386:18-22 [General Dynamics' lease was negotiated around the time that the Authority split from the Port]
2	
3	
4 67. Hernandez' employment with the Authority ended in February 2006.	Hernandez Depo. 114:19-24 [Exh. 1].
5	
6 68. Thella Bowens made the decision to terminate Hernandez' employment.	Bowens Dec. 3:1-10

7

8 **TELEDYNE RYAN DISCLOSURE:**

9 **Adjudication No. 15:** Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the Teledyne Ryan lease, fails as a matter of law because Hernandez could not have had a reasonable belief that the Teledyne Ryan lease was unlawful.

11 Undisputed Material Fact	12 Evidence
13 69. Hernandez alleges that he disclosed that the Authority overpaid for the Teledyne Ryan lease.	14 Hernandez Depo. 410:3-11 and 408:3-25 [Exh. 1].

15 **Adjudication No. 16:** Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the Teledyne Ryan lease, fails as a matter of law because Hernandez has not identified a state or federal statute, rule or regulation of which he disclosed a violation.

18 Undisputed Material Fact	19 Evidence
20 70. Hernandez alleges that he disclosed that the Authority overpaid for the Teledyne Ryan lease.	21 Hernandez Depo. 410:3-11 and 408:3-25 [Exh. 1].
22 71. The Authority's Code contains administrative, regulatory and revenue ordinances of the San Diego County Regional Airport Authority.	23 Exhibit 7 [Section 1.01 (a)]
24 72. The Authority is a local government entity.	25 Public Utilities Code section 170002

**Adjudication No. 17: Hernandez' First Cause of Action fails as matter of law, insofar as it is based on any alleged disclosure regarding the Teledyne Ryan lease, because there is no causal connection between his alleged protected activity and his termination.**

Undisputed Material Fact	Evidence
73. At the time that the Authority entered into the lease on the Teledyne Ryan property, it was aware that there was contamination on the property.	Hernandez Depo. 406:4-24 [Exh. 1]
74. Hernandez did not speak to anyone regarding the contamination on the property until after the Authority entered into the lease with regard to the Teledyne Ryan property.	Hernandez Depo. 406:25-408:2 [Exh. 1]
75. Paul Manasjan also expressed dissatisfaction regarding the Teledyne Ryan Lease.	Hernandez Depo. 413:22-414:6 [Exh. 1]
76. Paul Manasjan is still employed at the Authority.	Woodson Dec. 3:19-20.
77. Hernandez first made the disclosure regarding the Teledyne Ryan Lease in late 2003 or 2004.	Hernandez 410:3-16 [Hernandez disclosed to Sexton immediately as they began to make the designs for the SAN Park project]; Hernandez 408:3-14 [developed the design documents for the SAN Park project in late 2003 or 2004]
78. Hernandez' employment with the Authority ended in February 2006.	Hernandez Depo. 114:19-24 [Exh. 1].
79. Thella Bowens made the decision to terminate Hernandez' employment.	Bowens Dec. 3:1-10

#### **RESTROOM PROJECT DISCLOSURE:**

**Adjudication No. 18: Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the restroom project, fails as a matter of law because Hernandez could not have had a reasonable belief that the restroom project was unlawful.**

Undisputed Material Fact	Evidence
80. Hernandez alleges that he disclosed that unless the Authority received space from Host, it would not be able to comply with the ADA regulations on the restroom project, and thus the project was held up.	Hernandez Depo. 343:16-344:4 and 357:10-358:6 [Exh. 1]

**Adjudication No. 19: Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the restroom project, fails as a matter of law because Hernandez admits that the Authority did not violate the ADA, nor did it express its intention to violate the ADA.**

Undisputed Material Fact	Evidence
81. The Authority never indicated that it did not want to comply with the ADA, nor did the Authority at any time violate the ADA.	Hernandez 366:12-367:21; 371:15-372:22.

**Adjudication No. 20: Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the restroom project, fails as a matter of law because Hernandez has not identified a state or federal statute, rule or regulation of which he disclosed a violation.**

Undisputed Material Fact	Evidence
82. Hernandez alleges that he disclosed that unless the Authority received space from Host, it would not be able to comply with the ADA regulations on the restroom project, and thus the project was held up.	Hernandez Depo. 343:16-344:4 and 357:10-358:6 [Exh. 1]
83. The Authority's Code contains administrative, regulatory and revenue ordinances of the San Diego County Regional Airport Authority.	Exhibit 7 [Section 1.01 (a)]
84. The Authority is a local government entity.	Public Utilities Code section 170002

**Adjudication No. 21: Hernandez' First Cause of Action, insofar as it is based on any alleged disclosure regarding the restroom project, fails as matter of law because there is no causal connection between his alleged protected activity and his termination.**

Undisputed Material Fact	Evidence
85. Hernandez first made the disclosure regarding the restroom project in 2003 or 2004.	Hernandez Depo. 357:19-24 [Exh. 1].
86. Parsons first raised the issue regarding the necessity of taking the 30 square feet of space in 2002.	Hernandez Depo. 347:16-348:3 [Exh. 1]
87. The investigation into alleged benefits received by Hernandez began in approximately November 2005.	Bowens Dec. 2:7-22; Woodson Dec. 2:5-8.



1 88. Hernandez' employment with the  
2 Authority ended in February 2006.

Hernandez Depo. 114:19-24 [Exh. 1].

3 89. Thella Bowens made the decision to  
4 terminate Hernandez' employment.

Bowens Dec. 3:1-10

5 **LPI DISCLOSURE**

6 **Adjudication No. 22:** Hernandez' First Cause of Action under Labor Code section 1102.5,  
7 insofar as it is based on any alleged disclosure regarding LPi, fails as a matter of law  
8 because Hernandez could not have had a reasonable belief that he disclosed unlawful acts.

Undisputed Material Fact	Evidence
9 90. Hernandez alleges that he disclosed that 10 LPi underbid the Authority and that LPi 11 double-billed workers' compensation.	Hernandez Depo. 521:3-20 [Exh. 1]

12 **Adjudication No. 23:** Hernandez' First Cause of Action under Labor Code section 1102.5,  
13 insofar as it is based on any alleged disclosure regarding LPi, fails as a matter of law  
14 because Hernandez has not identified a state or federal statute, rule or regulation of which  
15 he disclosed a violation.

Undisputed Material Fact	Evidence
16 91. The Second Amended Complaint alleges 17 that Hernandez disclosed violations of the 18 Authority's Codes.	Second Amended Complaint 7:26-27; 8:17-19; 9:7-8; 10:11-14
19 92. The Authority's Code contains 20 administrative, regulatory and revenue 21 ordinances of the San Diego County 22 Regional Airport Authority.	Exhibit 7 [Section 1.01 (a)]
23 93. The Authority is a local government 24 entity.	Public Utilities Code section 170002

25 **Adjudication No. 24:** Hernandez' First Cause of Action fails as matter of law, insofar as it  
26 is based on any alleged disclosure regarding LPi, because there is no causal connection  
27 between his alleged protected activity and his termination.

Undisputed Material Fact	Evidence
28 94. Hernandez first made the disclosure regarding LPi's expenses in 2004.	Hernandez 493:24-495:15 [Hernandez made his first disclosure at the three-month or six- month submittal]; Sexton Dec. 3:15-17 [the LPi contract began in January 2004]

1 95. The investigation into alleged benefits	Bowens Dec. 2:7-22; Woodson Dec. 2:5-8.
2 received by Hernandez began in	
3 approximately November 2005.	
4 96. Hernandez' employment with the	Hernandez Depo. 114:19-24 [Exh. 1].
5 Authority ended in February 2006.	
6 97. Thella Bowens made the decision to	Bowens Dec. 3:1-10
7 terminate Hernandez' employment.	

8 Dated: September 7, 2007

PAUL, PLEVIN, SULLIVAN &  
CONNAUGHTON LLP

By: *Sandra L. McDonough*

FRED M. PLEVIN  
SANDRA L. MCDONOUGH  
ALBERT R. LIMBERG  
Attorneys for Defendant  
SAN DIEGO COUNTY REGIONAL  
AIRPORT AUTHORITY



1 Cathryn Chinn, Esq. (State Bar 93340)  
1901 First Avenue, Suite 400  
2 San Diego, California 92101  
Telephone (619) 234-9000  
3 Facsimile (619) 699-1159

4  
5 Attorney for Plaintiff  
JOSE HERNANDEZ  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO, CENTRAL BRANCH, GENERAL UNLIMITED

10 JOSE HERNANDEZ,

11 Plaintiff,

12 v.

13 SAN DIEGO COUNTY REGIONAL  
AIRPORT AUTHORITY, a public entity  
14 and DOES 1 through 12, Inclusive,

15 Defendants.  
16  
17  
18  
19

Case No. : GIC 871979

PLAINTIFF JOSE HERNANDEZ'  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
DEFENDANT SAN DIEGO COUNTY  
REGIONAL AIRPORT AUTHORITY'S  
MOTION FOR SUMMARY JUDGMENT OR,  
IN THE ALTERNATIVE, SUMMARY  
ADJUDICATION

DATE: November 16, 2007  
TIME: 1:30 p.m.  
DEPT.: 75  
JUDGE: HON. RICHARD E. STRAUSS  
ACTION FILED: 9/1/06  
TRIAL DATE: 1/4/08

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PL'S MEMO OF P'S&A'S IN OPPOS. TO DEF SDCRAA'S MSJ OR SUMM. ADJUD.

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## I.

INTRODUCTION

Over a period of time Plaintiff Jose Hernandez persistently complained that the public was being ripped-off to the tune of tens of millions of dollars. He complained to his boss, Ted Sexton (Vice-President of Operations), of fraudulent disclosures in property leases and contracts affecting the financial viability of the San Diego County International Airport. He last complained the Airport was being bilked by a friend of the Authority's CEO (Thella Bowens) on a parking management contract with a company named Lindbergh Parking Incorporated (LPI). He placed that company on a 90-day notice to explain what appeared to be improper charges for its services. Within 30 days, Bowens hired a San Diego law firm to assemble a case for Hernandez' termination.

In this motion Defendant advances the argument that there is no public policy which favors the conservation of public funds. If Defendant is correct, as trustee of the San Diego Airport it has no legal obligation whatsoever to shield the public treasury from waste and wilful misappropriation. Defendant further contends that because there is no such obligation, it was entitled, as a matter of law, to terminate Hernandez' employment for the exposure of such waste and misappropriation. Defendant's position is essentially self-refuting. This response will enumerate the constitutional and statutory authority supportive of a policy against the wilful and/or negligent waste of public resources.

## II.

OBJECTION

Plaintiff hereby objects to the format of the portion of this motion identified as a "summary adjudication." Section 437c(f) of the California Code of Civil Procedure allows for summary adjudication only as to "causes of action" or "affirmative defenses" and precludes the adjudication of issues which make up less than an entire claim or defense. Therefore, the characterization of "issues" for summary adjudication is done in error. The points raised do not and cannot constitute an adjudication unless the Court's determination reaches the entire cause of action. As noted in Hernandez' objection to the Airport's Separate Statement, the issues proposed are not more than argumentative statements, and may not be responded to except by way of argument. Defendant's

choice in structuring the motion in this way has made it awkward in responding to its Separate Statement, and has required the generation of cumbersome responsive documentation significantly in excess of what should have been necessary.

### III.

#### STATEMENT OF FACTS

Defendant San Diego County Regional Airport Authority (Authority) was created in 2003 by the California Legislature. [Exh. A] Prior to 2003, the operations of the Airport were managed by the San Diego Port District (Port), which also retained the revenues generated through the operation of the Airport facilities and properties. [Exh. A] The Authority formation involved the creation of a board of directors and the appointment of an executive committee designed to establish the independence of the authority and its accountability to the public as public agency. [Exh. A]. Thella Bowens—who had once served as an employee of the Port—was appointed to the position of CEO/president director of the Authority. [Exh. A]

Plaintiff Jose Hernandez was hired in March 2001 as manager of ground transportation. In 2003 he became director of landside operations. His responsibilities included management of airport parking and terminal facilities and development and adherence to a budget for the operation of those facilities. He worked within a budget dictated by anticipated revenues from the management of Airport properties and facilities. Hernandez reported directly to Theodore Sexton, Vice-President of Operations, who reported to Thella Bowens. Bryan Enarson, Vice-President of Development, was a close confidant of Thella Bowens', and the lead negotiator on land lease contracts made with General Dynamics and Teledyne Ryan. [Plaintiff's Separate Statement of Additional Undisputed Material Facts (hereinafter "SAF") Nos. 1-3]

One of Hernandez' duties was the performance of the revenue forecasts associated with a lease from the Port of property located on the north side of the Airport (General Dynamics property). The lease price contemplated the use of the property for parking and revenues which would generate to the lease holder for 2100 stalls. [SAF No. 5] Hernandez' understanding of the lease was that the lease price was set by code for the years 2003, 2004 and 2005, and was thereafter subject to renegotiation. [SAF No. 6; California Public Utilities Code ("PUC") § 170056(f)(1-3)] Hernandez conducted an evaluation of the cash flow of the property when the lease came up for renegotiation

PL'S MEMO OF P'S&A'S IN OPPOS. TO DEF SDCRAA'S MSJ OR SUMM. ADJUD.

and determined that deficiencies in the property prevented from generating sufficient revenue to cover the lease price by at least \$2 million per year. The deficiency centered on the discovery of benzene contamination in the soil beneath the property which severely limited the development of the property for parking. [SAF No. 7] Hernandez communicated the deficiency in the property to Sexton and Bowens, and that the continuation of the lease at its existing rate would amount to a gift of public money to the Port. [SAF Nos. 8, 57, 59, 60]

Sexton and Bowens refused to renegotiate the terms of the lease. Sexton, then speaking on Bowens' behalf, justified the lease amount by stating, "that's just the price of freedom that Thella was willing to pay." [SAF Nos. 9, 58]

Another of Hernandez' duties was the performance of revenue forecasts associated with the evaluation of a lease from the Port of property located at the west side of the Airport (the Teledyne Ryan property). The lease of that property likewise contemplated the generation of revenues to cover the lease through its use as a parking lot. The lease had been negotiated by Enarson and was not subject to renegotiation. [SAF No. 10] Hernandez discovered this property was likewise contaminated and only a small portion of it was usable. [SAF No. 11] The contamination was grossly understated by the Port as a \$10 million expense (which the Port agreed to pay) when the real cost of remediation was in excess of \$30 million. [SAF Nos. 12, 61, 65] Hernandez then informed Sexton, Enarson and Bowens that the lease constituted an unwarranted expenditure of public money to the Port of over \$3 million per year. [SAF Nos. 13, 63, 64, 67]<sup>1</sup>

Another of Hernandez' duties was to oversee the construction and/or maintenance of public facilities at the terminals, including public restrooms. Hernandez attempted to expand the size of the public restrooms to alleviate overcrowding in the east terminal and bring them into compliance with the federal requirements that they be accessible by wheelchair, as required by the Americans with Disabilities Act (ADA). [SAF No. 14] He needed to annex 30 sq. ft. space from a concessionaire in order to comply with ADA requirements, but was told he could not do so by Enarson because Enarson had made handshake agreements with the concessionaires. [SAF No. 15]

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<sup>1</sup> Today that property is used for only 350 parking spaces for which the Authority pays the \$3 million. The property will not be remediated by 2010; it won't happen. It will not be remediated in whole by 2010. [SAF No. 66]

He told Sexton, Enarson and Bowens that he did not believe Enarson had the authority to enter into such agreements with the concessionaires, and that Enarson's enforcement of the agreements constituted a gift to the concessionaires. [SAF No. 16] The necessary improvements were never made.<sup>2</sup>

Another of Hernandez' duties was to help negotiate and monitor contracts for the management of parking services. The low bidder (based on "projected" reimbursable expenses) on a contract to manage the Airport's parking lots was Lindbergh Parking Incorporated (LPI). [SAF No. 17] Its bid was so low that Hernandez—whose job included management of Authority—suspected the bid was insincere. He thereafter closely monitored the performance of the contract and noted LPI was overcharging the Authority approximately \$1 million to 1.5 million per year. This estimate was based, among other things, on the fact that (1) LPI did not lease new shuttle transportation vehicles as stated in its bid (but instead used older shuttles owned by LPI); (2) LPI was seeking reimbursement for an unnecessary management position (owner/manager being paid for management work he did not perform); and (3) LPI was double-billing the Authority for workers' compensation insurance. [SAF Nos. 18, 68, 69, 70]

Hernandez reported these overcharges to Sexton, Enarson and Bowens, and placed LPI on a 90-day timetable to explain and justify all the expenses. He informed Sexton, Enarson and Bowens that the LPI contract constituted an unwarranted expenditure of public money to LPI. [SAF Nos. 19, 71, 72] The negotiating agent on behalf of LPI—Elizabeth Stump-Moore—was, however, a close personal friend of Bowens'. [SAF No. 20]

Within a month of being told LPI could not justify or explain its expenditures, Bowens engaged a law firm to investigate Hernandez for "ethics" violations associated with the receipt of benefits from the Authority's vendors. This was the first occasion in the history of the Authority that a law firm was retained to investigate an employee for alleged ethics violations. [SAF No. 21] The

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<sup>2</sup> The restroom project was stalled from 2002 through 2005 because V.P. Bryan Enarson was unwilling to request the redaction of 30 sq. ft. from Host. It still hasn't been built. It was V.P. Enarson's unwillingness to take that space away that made it impossible for the Authority to comply with ADA requirements of a 2% grade from the floor. up to the restrooms and then landing requirements. Hernandez raised the ADA issues with Sexton. He briefed it time and time again to Ted, sometimes on a daily, sometimes on a weekly, basis. Hernandez raised the ADA issue with Sexton because it was his number one priority. He raised the issue with Ted 50 to 100 times over a two-year period. Sexton was afraid to bring up the issue to Bryan Enarson. He just didn't want to deal with him. [SAF Nos. 53-56]

law firm, per report submitted by Patrick Swan, Esq., concluded Hernandez received (1) free rounds of golf; (2) airline tickets to Hawaii and Las Vegas; and (3) charger football tickets, the value of which placed Hernandez in violation of the Ethics Code applicable to Authority employees. [SAF No. 22] Bowens claims to have terminated Hernandez' employment based on the conclusions in the report. [SAF No. 23]

Regarding the "free rounds of golf," Swan's report failed to mention Hernandez cleared the trip with his boss, Sexton, before going, after disclosing the nature of the outing and that the golf rounds were supplied by Mike Parrish. [SAF No. 24, 41] In the process, Sexton admitted he had attended the same golf outing under similar circumstances. [SAF No. 25] Swan also failed to mention Hernandez compensated Parrish for the round by buying Parrish's lunch and dinner and by making gift contributions for the raffle. The net personal value to Hernandez was negative by over \$200. [SAF No. 26] Swan also failed to mention Hernandez had a strong social relationship with Parrish, which included joint family outings and gatherings, dinners, barbecues and sporting events. [SAF No. 27]

Regarding the plane tickets, Swan failed to mention that ticketing benefits were regarded by management as normal benefits of their workplace, and that Sexton assigned Hernandez the responsibility on frequent occasions to obtain ticket upgrades for various employees and board members. Hernandez specifically discussed whether the practice was ethically acceptable and Sexton replied it was. [SAF Nos. 28, 74-78, 79, 81] Swan's report failed to mention, notwithstanding the practice among Hernandez' superiors to receive passes and upgrades, that Hernandez' receipt of those benefits was limited to gifts from personal friends. The tickets on Southwest came from Parrish. The tickets on Hawaiian Air came from Janet Nix, another personal friend, who told him she gave tickets like those to all kinds of friends having nothing to do with business. Moreover, the Hawaiian tickets were listed as "space available" and further identified as having "no dollar value" and could not be transferred or redeemed. [SAF No. 29, 30]

Regarding the football tickets, Swan's report failed to mention ACE Parking did not have a contractor or vendor agreement of any sort with the Authority. [SAF No 31, 39] He further failed to mention Hernandez had a longstanding friendship with the ACE Parking manager who invited him to the game which preceded Hernandez' employment with the Authority. They were friends

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from Hernandez' prior employment relationship with ACE Parking. [SAF No. 32]<sup>3</sup>

1 During Swan's interviews with Hernandez, Swan expressed no interest in the fact that Parrish  
2 and Hernandez were close personal friends. [SAF No. 33] He avoided discussion of the tendency  
3 of other employees, such as Bowens and Sexton, to make active and aggressive use of their positions  
4 to acquire ticketing upgrades and benefits worth thousands of dollars. [SAF No. 34] When  
5 Hernandez attempted to explain these friendships and practices, Swan cut him off stating he was not  
6 interested in the nature of those friendships and what the office practice was. [SAF No. 35]

7 Given that Hernandez had previously received outstanding performance evaluations and that  
8 there was considerable ambiguity in this so-called "ethics" policy, Hernandez might have responded  
9 well to a warning before a final decision to terminate his employment. The Authority did, in fact,  
10 have a progressive disciplinary policy set forth in writing, which emphasized the Authority's  
11 commitment to preserve employment through pre-termination warnings and training. That the  
12 Authority failed to adhere to this policy and instead routed the matter to an expensive and  
13 contentious law firm is a truly extraordinary decision. [SAF Nos. 36, 37, 38]

14 Hernandez had absolutely never received free food from the concessions in the Airport  
15 terminals. [SAF No. 42] To this day Hernandez still stands by the fact that most of the items on the  
16 conflict-of-interest state form should not have been disclosed. [SAF No. 44]<sup>4</sup>

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23 <sup>3</sup> In late 2004, early 2005, Ace Parking was not working to take over the parking contract. It was Scott Jones,  
24 as an individual, trying to buy the shares of Maurice Gray. There's a clear distinction. This contract is not with Ace  
25 Parking. It is with Scott Jones, as an individual. [SAF No. 49] Hernandez purchased tickets that were not available to  
the public for the Authority's general counsel, Bret Lobner. The tickets were blocked-out and unavailable for the box  
office to sell. Hernandez told Lobner they were unavailable to the public. Ted Sexton told Hernandez to get the tickets  
for Lobner. Hernandez was not already going to the stadium to purchase tickets that day. [SAF No. 50]

26 <sup>4</sup> Clifforine Massey—who supposedly informed Bowens of Hernandez' receipt of food gratuities—was an  
27 unreliable and undependable employee who refused to come to work. She was repeatedly counseled by Hernandez and  
28 placed on a disciplinary work plan by Human Resources. Massey refused to abide by the work plan and quit. [SAF  
No. 51]. Jim Prentice—another "source" for Bowens—was a gossip who reported to Sexton. Prentice stirred-up gossip  
and chaos. He was an unreliable and undependable employee. Sexton referred to him as "that little shit." [SAF No. 52]



## IV.

ARGUMENT

A. An Employee's Notice Obligation in a Public Policy Termination Does Not Require His Articulation of the Specific Law.

While an employer is entitled to know what the employee thinks he has done wrong, the entitlement is to "information" forming a reasonable basis of the violation of a statute. Commentary on the identity and the content of laws is an occupational pastime for lawyers, not for employees seeking protection under Labor Code § 1102.5. The employee's duty is to supply the facts and to believe "reasonably" that those facts relate to an act which the state prohibits. California Labor Code § 1102.5 provides:

An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

The statutory language requiring implicit reference to a violation of a "state or federal statute" aligns with modern cause authority supporting what in common law is referred to as a "public policy" claim. Such a claim prohibits retaliation against employees who are subject to retaliation for raising matters which implicate important public "policies." *Gantt v. Sentry Insurance Co.* (1992) 1 Cal.4th 1083, 1094. The decision further established the importance of "tethering" a claim to "fundamental policies that are delineated in constitutional or statutory provisions." *Id.* at 1095.

This statute thus appears to follow the "Public Policy" doctrine which prohibits terminations which violate a policy tethered to a statute. [See *Gantt v. Sentry Insurance Co.* (1992) 1 Cal.4th 1083, 1095]. Under the Public Policy doctrine, to say the public policy at issue "must have been articulated at the time of the discharge," *Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 889-890, does not mean the employee must cite chapter and verse of statutes, regulations, and cases to the employer before the wrongful termination. Instead, it is only necessary, as a matter of law, that the policy was "well established at the time of the discharge." *Id.* at 894. It is only necessary for Plaintiff to now show that at the time of the discharge the applicable statutes and regulations "sufficiently described the type of prohibited conduct to enable an employer to know the fundamental public policies that are expressed in that law." *Sequoia Ins. Co. v. Superior Court*

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(1993) 13 Cal.App.4th 1472, 1480.

Contrary to what the Airport Authority claims, neither the Labor Code nor cases setting forth the "public policy" doctrine in employment cases require Hernandez to either articulate or know the specific statute which is being violated. Just as it is unlikely he would know the statute which embodies the state proscription against murder, it is unlikely he would know the statute or statutes which proscribe the misappropriation of public funds. Yet he may have a reasonable basis on which to believe that a homicide or a misappropriation of funds is illegal.

Therefore, Defendant cannot plausibly disclaim knowledge of the law's requirements when the nature of the wrong--misappropriation of public resources--is a plainly-stated concern. As the authorities set forth below, the protection of public resources against wilful and negligent waste is not only a public policy, but one of the central organizing principles of representative government.

**B. The Policy of the State of California Requires Diligent Conservation and Precludes the Gift of Public Funds.**

It is difficult to imagine any public servant or official--legislative, judicial or executive--would have the audacity or "brass" to state publicly that he is not obliged as a matter of law to protect against the waste and/or misappropriation of public funds. But that is precisely what the Airport Authority has done in this motion. Significantly, none of the declarants in support of this motion adhere in writing to the politically suicidal proposition that they are under no legal duty to protect public money. They have, instead, assigned the task of explaining that position to their lawyers.<sup>5</sup>

**1. The California Constitution**

There is abundant support in California law in support of a policy which would prohibit the gift of Airport money to other municipal agencies and to private entities. That authority begins with the California Constitution. Article XVI, § 6, states:

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<sup>5</sup> The Port District has implied, though not expressly stated, that Hernandez is limited to statutory violations identified in his complaint. There is no such requirement restriction under the law. [See *Green v. Ralee Engineering* (1998) 19 Cal.4th 66, at p. 83, fn 7, implying that Plaintiff must by time of opposition to summary judgment identify specific statutory authority.] Though not required of him in his complaint, Hernandez did identify the legislative act--i.e., PUC § 170000, et. seq.--which reposed a public trust in employees of the Airport Authority. Included in that trust, as discussed below, are clear principles established in statute which preclude the negligent or intentional waste or gift of public funds. Moreover, the complaint mentioned specific statutory mandates in PUC § 170000, et seq., which require the Authority maximize revenues, negotiate leases on commercial reasonable terms, and to exercise care to meet the needs of the users of the airport.



The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever.

This provision of California law which precludes the gift of public money is interesting in two respects: (1) it sets forth as a foundational rule of government a policy valuing the conservation of public resources; and (2) it reposes accountability for such resources in each governmental entity, thereby precluding gifts between municipal corporations. The second item would therefore clearly preclude exactly the kind of casually administered accountability observed in this case, where one local entity—the Airport Authority—makes large financial gifts to another local entity—the Port District. The Airport Authority cannot therefore argue that political considerations related to the establishment of a friendly relationship between the Airport and the Port justify gifts between them, nor can it plausibly support gifts from the Airport to the LPI. Accordingly, the termination of an employee who questions the Airport's generosity is the proper subject of a lawsuit.

**2. General Legislative Enactments—Pen. Code § 424 and Govt. Code § 822**

There is additional support in California law in its general legislative enactments. The California Supreme Court in *Stanson v. Mott* (1976) 17 Cal.3d 206, 225 states:

We recognize, of course, that public officials who either retain custody of public funds or are authorized to direct the expenditure of such funds bear a peculiar and very grave public responsibility, and that courts and legislatures, mindful of the need to protect the public treasury, have traditionally imposed stringent standards upon such officials.

At least from the point of view of the California Supreme Court, it is reasonable to assume that the negligent and/or intentional waste of public funds violates state law. In making the above statement, the Court referred to two statutes, i.e., California Penal Code § 424 [which applies criminal penalties to the appropriation of "public moneys...without authority of law...for the use of another" or to one who "Fraudulently alters, falsifies, conceals, destroys, or obliterates any account" of public money], and § 822 of the California Government Code [which confers civil liability for a

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loss of public money "sustained as a result of his own negligent or wrongful act or omission." The Supreme Court has held that these statutes support a taxpayer's cause of action against a public employee who negligently misappropriates public funds.<sup>6</sup>

Any time a public official misappropriates public money, he is subject to scrutiny which implicates criminal and civil penalties. Hernandez' complaints thus address statutory prohibitions against both the negligent [Govt. Code § 822] and intentional [Penal Code § 424] misappropriation of public resources. He put the Airport on notice of the onerous and inequitable lease terms made with the Port, of inappropriate commitments to private concessionaires, and of fraudulently billing by a parking management company (LPI).<sup>7</sup> When the Airport received such information, it insisted on continuing with financial losses numbering in the tens of millions of dollars. It was, as Sexton suggested, something which personally benefitted the Airport CEO (Bowens) because the onerous leases with the Port were the "price of her freedom." The negotiating agent of LPI was her close personal friend. This behavior thus implicates state policies of sufficient magnitude to bear criminal sanctions. That is to say, after Hernandez notified Sexton and Bowens of the commercially unreasonable arrangements with the Port and other individuals, they could no longer persist with those arrangements without, in effect, misappropriating those funds. Therefore, as Hernandez persisted in his objection to the continuation of those arrangements, he was, in effect, objecting to the criminal misappropriation of public money.

### 3. State-Enabling Legislation for the Airport Authority

California Public Utilities Code (PUC) § 170056 provides authorization to the Airport

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<sup>6</sup> The exact reading of Government Code § 822 is, "A public employee is not liable for money stolen from his official custody. Nothing in this section exonerates a public employee from liability if the loss was sustained as a result of his own negligent or wrongful act or omission." Government Code § 8314 further supports a public policy precluding the use of funds for purposes not expressly authorized: "(a) It is unlawful for any elected state or local officer, including any state or local appointee, employee, or consultant, to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law. (b) For purposes of this section: (1) "Personal purpose" means those activities the purpose of which is for personal enjoyment, private gain or advantage, or an outside endeavor not related to state business."

<sup>7</sup> The protection of "handshake" arrangements with private concessionaires not only constitutes a misappropriation of Airport land resources to those entities, but implicates other laws designed to protect the interests of the handicapped under the Americans with Disabilities Act and Govt. Code § 12940. The Airport's acquiescence to fraudulent contractor behavior likewise implicates state law prohibiting such conduct. See California Public Contract Code Section 100(b) and the Authority's Contracting and Debarment Code, Article 5, Section 5.11(a)(3)-(6)(8) and Section 5.18(a).

Authority to take possession of property—subject to the negotiation of leases—held in trust by the Airport. PUC § 170064(b) and (c) provide the following general mandate:

(b) Upon the completion of the transfer pursuant to Section 170062, the authority shall assume all revenue stream revenues to fund its activities, operations, and investments consistent with its purposes. The sources of revenue available to the authority may include, but are not limited to, imposing fees, rents, or other charges for facilities, services, the repayment of bonded indebtedness, and other expenditures consistent with the purposes of the authority.

(c) To the extent practicable, the authority shall endeavor to maximize the revenues generated from enterprises located on the property of the authority. [Emphasis added.]

Subsection (c) appears to confirm and substantiate policies identified in law cited above, i.e., that it is charged with the task of protecting its autonomy and with serving as trustee over funds necessary for its effective operation. PUC § 170062(E) further authorizes and enables the Airport Authority to preserve its autonomy vis-a-vis the Port District:

(E) Performance of all these services shall be subject to the direction and control of the authority, and shall be provided in accordance with specifications, policies, and procedures as communicated by the authority to the Port from time to time. In all cases, the Port shall provide services of sufficient quality, quantity, reliability, and timeliness to ensure that the Authority can continue the operation, maintenance, planning and improvement of and for San Diego International Airport consistent with the standards and practices under which the airport is operated on the effective date of the act that added this subparagraph or higher standards as the Authority may adopt, or as may be required in the Authority's judgment to meet the requirements of federal or state law, or the needs of the users of the airport for the safe, secure, and efficient operation of the airport. The Authority also, from time to time, may establish performance standards for and may conduct financial or performance audits, or both, of all services provided by the Port and all charges or claims for payment for the services provided. [Emphasis added.]

Insofar as Hernandez' complaints concern the improper surrender of Airport resources to concessionaires where there are needs to expand and improve Airport restrooms and the improper payment of expenses to the parking management company (LPI), these would go directly to the legislative mandate under PUC § 170064(c) to maximize the revenues" of the Airport and PUC § 170062(E) to provide for "the needs of the users of the airport for the safe, secure, and efficient operation of the airport." The gift of public resources to parking contractors who defraud the Airport and to concessionaires who pose an obstacle to the modification of public restrooms would be

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inconsistent with such a mandate.

1 While Defendant is correct in stating that some of the terms of the Airport's lease with the  
2 Port on the General Dynamics property are legislatively enacted in PUC § 170056(f)(1) and (2),  
3 Defendant's omission of the last sentence of §§ 170056(f)(1) and 170056(f)(3) is significant. Those  
4 provisions read:

5 (1) The rent shall be paid monthly in arrears at the rate of four million  
6 seven hundred thousand dollars (\$4,700,000) for calendar year 2003,  
7 six million seven hundred thousand dollars (\$6,700,000) for calendar  
8 year 2004, and eight million seven hundred thousand dollars  
9 (\$8,700,000) for calendar year 2005. Thereafter, the annual rent shall  
10 be level, for the balance of the term, based on the fair market value of  
11 the property as of January 1, 2006, and a market rate of return on that  
12 date. [Emphasis added.]

13 (3) All other terms of the ground lease shall be in accordance with  
14 reasonable commercial practice in the San Diego area for long-term  
15 real property ground leases.

16 The provision—not referenced in Defendant's moving papers—appears to confirm the  
17 renegotiation of the General Dynamics lease for 2006 onward was not legislatively stabilized and,  
18 in fact, placed a duty on the Airport Authority to assure the terms were commercially reasonable and  
19 at a fair market rate.

20 PUC § 170056(a)(1)(B) provides the Airport Authority with right of possession of the  
21 Teledyne Ryan property. While it is unclear on the face of the statute what obligation, if any, the  
22 Airport had to Teledyne Ryan, it is clear the Airport negotiated a lease with the Port based on bad  
23 information about the available use of that property. The Port originally represented the property  
24 was available for use as a parking facility, subject to \$10 million in environmental cleanup.  
25 Hernandez discovered the Port's representation had been false and \$30 million in cleanup would  
26 be required. The terms of a lease could be rescinded and/or renegotiated based on fraud, mistake  
27 or violation of the public interest. [See Cal Civ Code § 1689] Since the remedy is available, a  
28 negligent or willful failure to do so would, in effect, constitute a gift to the Port, and is hardly  
consistent with the Airport's mandate to maximize its revenues.<sup>8</sup>

<sup>8</sup> In light of the fact that the enabling statutes which set forth duties of the Authority are themselves legislative acts embodied in statute, Defendant's first proposed summary "adjudication" is unintelligible. While the "ethics code" to which Defendant alludes is arguably a non-statutory code, PUC 170056(f) (1) and (3) and 170064(b) and (c), PL'S MEMO OF P'S&A'S IN OPPOS. TO DEF SDCRAA'S MSJ OR SUMM. ADJUD.

C. There Is Substantial Evidence to Support the Existence of a Causal Relationship Between Hernandez' Complaints and His Termination.

There are three major reasons why a reasonable person could infer Hernandez' termination was motivated in part by his complaints.

First, Hernandez' revelations on the leases, restroom expansion, and the overpayment LPI would likely be personally threatening to Thella Bowens, the Airport CEO. The allegations, at a minimum, suggest incompetent or collusive behavior likely to attract public scorn to the highest level of the organization, i.e., Thella Bowens, the CEO. Her past employment with the Port and her friendship with the negotiating agent of LPI would certainly not help to abate criticism directed toward her for the waste of tens of millions in public resources. Hernandez' insistence that LPI forbear a 90-day scrutiny and audit was likely to make Bowens uncomfortable.

Second, the fact that Bowens personally commenced an investigation of Hernandez' allegedly unethical behavior within 30 days of Hernandez' demands against LPI suggests a causal relationship between the two events. Close temporal relationships between complaints and retaliatory acts—in this case an ethics investigation—are prima facie evidence of a retaliatory motive. [See in context of Govt. Code § 12940(h)—retaliation for discrimination complaint—*Flait v. North American Watch* (1992) 3 Cal. App. 4th 467, 479; *California Fair Employment and Housing v. California Court of Appeal* (2004) 122 Cal. App. 4th 1004, 1023.]

Third, and no less important, is the fact that the reason given for Hernandez' termination is pretext. An inference of pretext is supported by the following:

(1) The airport did not conduct its own investigation. What most reasonable persons might consider a "normal" investigation of an individual with outstanding performance reviews might consist of a conversation with Hernandez. Instead the Airport appears to have spent in excess of \$30,000 in the retention of a law firm—cloaked in the secrecy of attorney-client privilege—on a fault-finding mission. The report itself is immoderate, as if the person who prepared it was tasked to slant his conclusions in favor of ethical breaches, and neglected important details, such as the fact that ACE Parking was Hernandez' past employer and had no relationship with the

referenced above are included in the statutory mandate under which the Airport Authority was created.

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airport, that Hernandez and his family had close personal and social ties to Parrish (the Southwest Airlines agent and organizer of the golf tournament). [SAF Nos. 21-23, 33-35]

(2) Hernandez did not breach any ethical rules of the Airport Authority. Even the strongest case for the receipt of improper gifts—free standby tickets to Hawaii—were arguably outside the scope of the ethical rule which prohibited the receipt of benefits “not available to the general public.” The tickets themselves were marked “no value,” allowed travel only on unsold seats, and could not be sold or transferred to others. Janet Nix, the Hawaiian Airlines ticket donor, was a personal friend of Hernandez’, and swears she regularly gives the tickets to members of the general public. Giving the Authority the benefit doubt under these circumstances, one can at best make an ambiguous claim against Hernandez for ethical violations. [SAF Nos. 29, 30]

(3) Hernandez’ superiors regularly engaged in the same conduct of which Hernandez was accused, and told Hernandez that such conduct was acceptable. Hernandez was, in fact, tasked to procure first-class upgrades for senior Authority executives and board members by his boss, Sexton. In the course of procuring benefits for Enarson, Sexton, and Bowens, he asked if it was ethically acceptable and Sexton confirmed it was.<sup>9</sup> [SAF No. 28]

(4) The Airport’s failure to follow its policy of progressive discipline was patently unreasonable. Given the ambiguousness of the content and application of ethical rules at the Airport, the only reasonable way of managing Hernandez’ alleged violations would have been a conversation designed to clarify that Hernandez’ should not accept flight passes and upgrades under any circumstances. Such an approach would have been highly consistent with the Airport’s written policy emphasizing progressive discipline, which stresses the value of rehabilitative measures in dealing with employees. A reasonable person would likely take such an approach with Hernandez, especially given the frequent donation of upgrades to senior management and Hernandez’ documented history of outstanding performance. One ought, therefore, conclude from the failure to apply progressive discipline in this case that the reason given for termination is pretext. [SAF Nos. 36-38]

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<sup>9</sup> Nix also corroborates Hernandez’ claim that the donation of upgrades on Hawaiian Airlines to senior employees and Airport board members was a regular occurrence.

**D. Defendant Airport Authority Has No Technical Defenses.**

Reserved for discussion at the tail end of Defendant's Points and Authorities are the technical defenses of "immunity" and "failure to exhaust administrative remedies," occupying less than two pages of argument. These defenses are without merit.

**1. Immunity.**

Government Code § 821.6 reads as follows:

A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.

It is clear on the face of the statute that the immunity applies only to the commencement of a judicial or administrative proceeding. The cases on which Defendant relies all involve the commencement of civil service proceedings. In both *Kemmerer v. County of Fresno* (1988) 200 Cal.App.3d 1426, 1436 and *Summers v. City of Cathedral City* (1990) 225 Cal. App. 3d 1047, 1064, the immunity was applied because the public employees being sued commenced and pursued employment subject to review by the civil service system. The case of *Shoemaker v. Myers* (1992) 2 Cal. App. 4<sup>th</sup> 1407, 1423-1424 (also cited by Defendant), also involved an employee terminated under administrative procedures mandated by civil service. The Court in *Shoemaker* explained that in *Kemmerer (supra)* § 821.6 applied because termination by an employer in an employment system governed by civil service protections involves the commencement of an administrative proceeding and prefaced its analysis of the termination claim by clarifying that it was "Accepting defendants' characterization of plaintiff's whistle-blower and *Tameny* claims as falling under the general rubric of malicious prosecution."<sup>10</sup> [Cites omitted.]

Hernandez was not a civil service employee, and the commencement of an "investigation" against him was not preparatory or pursuant to any existing or contemplated administrative proceeding. Section 821.6 is, therefore, inapplicable.

Even assuming, *arguendo*, that § 821.6 is applicable to commencement of an investigation

<sup>10</sup> The only other case to which Defendant cites is *Caldwell v. Montoya* (1995) 10 Cal.4<sup>th</sup> 972, which is not applicable because the opinion was directed at the application of Govt. Code § 820.2—"discretionary immunity" applied to legislatively instituted termination. In footnote 7 of the *Caldwell* decision, the Supreme Court observed whistleblower statutes in general are not subject to § 821.6 immunity.



which cannot lead to a "judicial or administrative proceeding," the *Shoemaker* case explicitly rejects application of § 821.6 where the theory of liability is predicated on a whistleblower statute such as § 1102.5. In *Shoemaker*, when considering whether the policy expressed in Government Code § 19683—a whistleblower statute very similar to § 1102.5—would override the policy expressed in § 821.6, the Court stated:<sup>11</sup>

Recognition of section 821.6 immunity for cases falling within section 19683 would largely emasculate the latter section and thereby frustrate the legislative purpose behind its enactment. Thus, violators of section 19683 are not entitled to section 821.6 immunity. We conclude defendants are not entitled to immunity in respect to plaintiff's section 19683 claim. [*Shoemaker, supra*, at 1425]

*Shoemaker*, therefore, quite emphatically supports the application of § 1102.5 liability, even where the public employee engages in the commencement of an administrative or judicial proceeding—which is not the case here. Defendant's citation to *Shoemaker* is, therefore, inexplicable.

## 2. Failure to Exhaust Administrative Remedies.

Defendant's argument is predicated on language in Labor Code § 98.7, which provides Hernandez "may file a complaint with the division within six months" for a number of Labor Code violations, including those enumerated under § 1100, et seq. The language is, on its face permissive, using the word "may" and thus not mandatory using the word "shall" or "must." It is a well-settled principle of statutory construction that the word "may" is ordinarily construed as permissive, whereas "shall" is ordinarily construed as mandatory. *Tribe v. Donaldson* (June 2007) CA-APP3, CO51902; *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 443. Moreover, on the face of § 98.7 at subsection (f) the Code reads: "The rights and remedies provided by this section do not preclude an employee from pursuing any other rights and remedies under any other law." This suggests a legislative intent, noted on the face of the statute, not to disable or restrict other options under law—i.e., to liberalize rather than restrict remedies.

Defendant's reliance on the case of *Campbell v. Regents of the Univ. of Cal.* (2005) 35 Cal.

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<sup>11</sup> Govt. Code § 19683 confers liability against a "state officer or employee [or] any person whatsoever [who]... directly or indirectly use[s] or threaten[s] to use any official authority or influence in any manner whatsoever which tends to discourage, restrain coerce or discriminate against any other state officer or employee" because the latter has reported information relating to an actual or suspected violation of law.

4th 311, 333-4 is misplaced. In *Campbell* the issue was whether § 1102.5 on its face abrogated mandatory internal grievance procedures set forth by the University. The opinion never addressed whether Labor Code § 98.7—by contrast with the required internal administrative procedures of the University—was designed to impose mandatory primary jurisdiction in the labor board. Since § 1102.5 is silent on whether it is designed to override mandatory internal administrative remedies in other contexts, and since Labor Code § 98.7 uses permissive—not mandatory—language, there is no basis on which conclude that Hernandez' choices have been legislatively limited. The permissive wording of § 98.7, together with the language in § 1102.5(f), which expresses a legislative intent to preserve rather than restrict options, strongly imply that an administrative recourse is not required.

The only other authority addressing the issue directly are federal district court cases published with inconsistent holdings. One such holding cited in Defendant's brief is *Neveau v. City of Fresno* (2005) 392 F.Supp. 2d 1159, 1180. But that holding is criticized in another federal district court holding in *Paterson v. Cal. Dep't of Gen. Servs.*, 2007 U.S. Dist. LEXIS 25957 (E.D. Cal. Mar. 8, 2007) stating, "To the extent that *Neveu* interprets *Campbell* as requiring that remedies before the Labor Commissioner must necessarily be exhausted as a prerequisite to suit under § 1102.5, this Court disagrees." *Id.*, fn 5. California authority, on the other hand, has preserved an unfettered right to bring an action for employment retaliation in the courts. In *Leibert v. Transworld Systems, Inc.* (1995) 32 Cal. App. 4<sup>th</sup> 1693, 1705-1705, the Court confirmed § 98.7 would have no effect on common law claims for retaliatory termination stating: "In light of the clear statutory language, respondent apparently concedes that the section 98.7 administrative remedies are not exclusive and that, generally, exhaustion of these remedies is not required before instituting a civil suit alleging certain non-statutory claims. Respondent's concessions are again warranted." So again, what is the basis for concluding that § 987.6, operating on its own, confers exclusive jurisdiction on the Labor Board? There appears to be none.<sup>12</sup>

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<sup>12</sup> Since, as noted above, the elements of a Labor Code § 1102.5 claim are exactly the same as those for a termination in violation of public policy. Hernandez has, as a practical matter, plead his way out of any administrative exhaustion requirement. If not already apparent in the pleading itself, Hernandez would request leave to amend his complaint to include "Wrongful Termination in Violation of Public Policy" among the monikers under which the First Cause of Action is identified. Thus, rather than enter summary judgment on this case, the Court should permit the case to go forward as a public policy claim.

V.

CONCLUSION

1  
2 It is difficult to imagine a more direct and compelling public interest than the preservation  
3 of public resources. Accordingly, the Authority's insistence that no such interest is addressed or  
4 implicated in federal and state laws and rules is incredulous. Hernandez' conflict with Thella  
5 Bowens was more than difference of opinion over which expenditures were wise or prudent. His  
6 investigation revealed fundamental deficiencies in leases and contracts which were bleeding the  
7 Authority of ten in millions of dollars. When he brought those deficiencies to light and the  
8 Authority continued its course, both criminal and civil laws were broken. Even if, in the final  
9 analysis, such laws were not broken, § 1102.5 protects Hernandez' right to raise the issues without  
10 being subject to termination.

11  
12 DATED: November 2, 2007

  
CATHRYN QUINN, Attorney for  
Plaintiff JOSE HERNANDEZ

1 Cathryn Chinn, Esq. (State Bar 93340)  
1901 First Avenue, Suite 400  
2 San Diego, California 92101  
Telephone (619) 234-9000  
3 Facsimile (619) 699-1159  
4

5 Attorney for Plaintiff  
JOSE HERNANDEZ  
6  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO, CENTRAL BRANCH, GENERAL UNLIMITED**

10 JOSE HERNANDEZ,

11 Plaintiff,

12 v.

13 SAN DIEGO COUNTY REGIONAL  
AIRPORT AUTHORITY, a public entity  
14 and DOES 1 through 12, Inclusive,

15 Defendants.  
16  
17  
18  
19  
20  
21  
22  
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26  
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Case No. : GIC 871979

PROOF OF SERVICE

DATE: November 16, 2007

TIME: 1:30 p.m.

DEPT.: 75

JUDGE: HON. RICHARD E. STRAUSS

ACTION FILED: 9/1/06

TRIAL DATE: 1/4/08

PL'S PROOF OF SERVICE (DOCS. IN OPPOS. TO DEF SDCRAA'S MSJ OR SUMM. ADJUD.)

**Hernandez v. SD Regional Airport Authority**  
Diego County Superior Court Case No. GIC 871979

**DECLARATION OF PERSONAL SERVICE**

I, the undersigned, declare: That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am employed in the County of San Diego, State of California, in which county the within-mentioned service occurred. My business address is \_\_\_\_\_, San Diego, California. I served the following document(s):

see attached list

on the parties in said action by personal service on:

FRED M. PLEVIN (SBN 126185)  
SANDRA L. MCDONOUGH (SBN 193308)  
ALBERT R. LIMBERG (SBN 211110)  
PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP  
401 B Street, Tenth Floor  
San Diego, California 92101-4232  
Telephone: 619-237-5200  
Facsimile: 619-615-0700

**ATTORNEYS FOR DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT  
AUTHORITY**

by delivery to:

Name (and title) of person left with: \_\_\_\_\_

Address where served:

same as above

Date of delivery:

November 2, 2007

Time of delivery:

\_\_\_\_\_.m.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 2, 2007, at San Diego, California.

# \_\_\_\_\_

**LIST OF DOCUMENTS**

**PLAINTIFF JOSE HERNANDEZ' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION**

**DECLARATION OF PLAINTIFF JOSE HERNANDEZ IN OPPOSITION TO DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION**

**DECLARATION OF MIKE PARRISH IN OPPOSITION TO DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION**

**DECLARATION OF CATHRYN CHINN IN OPPOSITION TO DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION**

**DECLARATION OF JANET NIX IN OPPOSITION TO DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION**

**PLAINTIFF JOSE HERNANDEZ' OPPOSITION TO DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S AMENDED SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION**

**PLAINTIFF JOSE HERNANDEZ' SEPARATE STATEMENT OF ADDITIONAL UNDISPUTED MATERIAL FACTS IN OPPOSITION TO DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION**

**PLAINTIFF JOSE HERNANDEZ' NOTICE OF LODGMENT IN OPPOSITION TO DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION**

**PLAINTIFF JOSE HERNANDEZ' COMPENDIUM OF FEDERAL CASES IN OPPOSITION TO DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION**

**PLAINTIFF JOSE HERNANDEZ' WRITTEN OBJECTIONS TO EVIDENCE IN OPPOSITION TO DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION**

**ORDER ON PLAINTIFF JOSE HERNANDEZ' WRITTEN OBJECTIONS TO EVIDENCE IN OPPOSITION TO DEFENDANT SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION**





Cathryn Chinn, Esq. (State Bar 93340)  
 1901 First Avenue, Suite 400  
 San Diego, California 92101  
 Telephone (619) 234-9000  
 Facsimile (619) 699-1159

Attorney for Plaintiff  
 JOSE HERNANDEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN DIEGO, CENTRAL BRANCH, GENERAL UNLIMITED**

JOSE HERNANDEZ,

Plaintiff,

v.

SAN DIEGO COUNTY REGIONAL  
 AIRPORT AUTHORITY, a public entity  
 and DOES 1 through 12, Inclusive,

Defendants.

Case No. : GIC 871979

PLAINTIFF JOSE HERNANDEZ'  
 OPPOSITION TO DEFENDANT SAN  
 DIEGO COUNTY REGIONAL AIRPORT  
 AUTHORITY'S AMENDED SEPARATE  
 STATEMENT OF UNDISPUTED  
 MATERIAL FACTS IN SUPPORT OF  
 MOTION FOR SUMMARY JUDGMENT OR,  
 IN THE ALTERNATIVE, SUMMARY  
 ADJUDICATION

DATE: November 16, 2007  
 TIME: 1:30 p.m.  
 DEPT.: 75  
 JUDGE: HON. RICHARD E. STRAUSS  
 ACTION FILED: 9/1/06  
 TRIAL DATE: 1/4/08

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PL'S OPPOS. TO DEF SDCRAA'S AMENDED SEP. STATEMENT IN SUPP. OF MSJ OR SUMM. ADJUD.

1 Plaintiff JOSE HERNANDEZ opposes Defendant SAN DIEGO COUNTY REGIONAL  
 2 AIRPORT AUTHORITY's Separate Statement of Undisputed Material Facts in support of its  
 3 Motion for Summary Judgment or, in the Alternative, Summary Adjudication, as follows:

4 **DEF'S ALLEGED UNDISPUTED FACTS/  
 SUPPORTING EVIDENCE**

**PL'S RESPONSE/  
 SUPPORTING EVIDENCE**

5 1. Jose Hernandez became the Director  
 6 of Landside Operations for defendant  
 7 San Diego County Regional Airport  
 8 Authority (the "Authority") on or  
 9 about October 2003.

1. Not disputed.

Hernandez Depo. 93:16-25 and  
 114:25-115:14 [Exh. 1]. Exhibit 16.

10 2. Article 2, Part 2.0, Section 2.10(b) of  
 11 the Authority's Ethics Code provides  
 12 in part:

2. Not disputed.

Restrictions on Benefits

12 (1) No Board member or employee of  
 13 the Authority shall request a benefit from  
 14 any person or entity or accept any benefit  
 15 intended to influence official duties.

14 (2) No Board member or employee of  
 15 the Authority shall accept anything of value  
 16 from anyone, other than the Authority or  
 17 another Board member or employee, for  
 18 doing his or her job.

17 (3) No Board member or employee of  
 18 the Authority shall accept benefits  
 19 aggregating more than one-half (½) the  
 20 amount of gifts permitted under the  
 21 California Political Reform Act in any  
 22 calendar year from any single source:

(A) That the Board member or employee  
 20 knows or should know is doing business  
 21 with the Authority or intends to do business  
 22 with the Authority or has done business with  
 23 the Authority during the previous 12  
 24 months; or

(B) That the Board member or employee  
 23 knows or should know has or is seeking a  
 24 license, permit, grant or benefit from the  
 25 Authority; or

(C) That the Board member or employee  
 25 knows or should know is an agent (whether  
 26 compensated or not) of any person or entity  
 27 described in Subsections (A) or (B).

27 Exhibit 3, pp. 12-13.

3. In approximately October or November 2005, two Authority employees advised Thella Bowens that they believed that Hernandez was behaving unethically and receiving benefits from the Authority's vendors.

3. Disputed.

Bowens Dec. p. 2, lines 7-19 (hereinafter noted as "Page:Line Numbers")

4. In November 2005, Bowens asked the Authority's Vice President of Administration, Jeffrey Woodson, to have an outside investigator conduct an investigation into the allegations that Hernandez had received benefits from the Authority's vendors.

4. Not disputed

Woodson Dec. 2:5-8; Bowens Dec. 2:20-22

5. Woodson approved the retention of Luce, Forward, Hamilton & Scripps ("Luce Forward") to conduct an investigation into the allegations made regarding Hernandez receiving benefits from the Authority's vendors.

5. Not disputed

Swan Dec. 2:9-12; Woodson Dec. 2:9-13

6. Edward Patrick Swan, Jr. of Luce Forward conducted an investigation, with assistance from John Gamberzky, regarding the allegations that Hernandez received benefits from the Authority's vendors.

6. Not disputed

Swan Dec. 3:1-10.

7. Hernandez admits that he received four non-revenue tickets from Hawaiian Airlines in 2004, and that he knew Hawaiian Airlines was doing business with the Authority at the time he received the tickets.

7. Disputed. He received the tickets from Janet Nix, in her capacity as a personal friend. Decl. J. Hernandez par. 11; Decl. J. Nix par. 11.

Swan Dec. 3:11-12; Hernandez Depo. 198:8-200:17 and 280:1-14 [Exh. 1]

1 8. Hernandez admits that he received at  
2 least two buddy passes from  
3 Southwest Airlines in 2004 for his  
4 children, and that he knew Southwest  
Airlines was doing business with the  
Authority at the time he received the  
tickets.

5 Hernandez Depo. 191:8-20 and 281:6-12  
6 [Exh. 1].

7 9. Mr. Swan in his investigation that  
8 there was sufficient evidence that  
9 Hernandez had accepted benefits  
10 from Authority vendors and  
contractors. He also concluded that  
there was sufficient evidence that  
Hernandez had violated Section 2.10  
of the Authority's Ethics Code.

11 Swan Dec. 4:6-14; Exhibit 4, pp. 2 and  
12 20-21; Exh. 3, pp. 12-13.

13 10. Mr. Swan prepared a written report  
14 of his findings and sent them to  
Thella Bowens on or about January  
19, 2006.

15 Swan Dec. 3:25-4:2; Exhibit 4

16 11. After reviewing the findings  
17 contained in Mr. Swan's January 19,  
18 2006 report, and upon the  
19 recommendation of Jeffrey Woodson  
and the Authority's Director of  
20 Human Resources, Diane Richards,  
Bowens determined that Hernandez'  
21 employment should be terminated  
because it appeared that he had  
accepted benefits in violation of  
22 Section 2.10 of the Authority's  
Ethics Code.

23 Bowens Dec. 3:1-10; Exh. 3, pp. 12-13  
[Ethics Code]; Woodson Dec. 2:25-3:4

24 12. Hernandez alleges that he was  
25 advised to keep the investigation  
confidential.

26 Hernandez 840:12-15 [Exh. 2]; Second  
27 Amended Complaint p. 11, lines 26-28.

28 In the alternative, the Authority submits the following Separate Statement of Undisputed

8. Disputed. He received the tickets  
from Mike Parrish, in his capacity as  
a personal friend. Decl. J. Hernandez  
par. 9-10; Decl. M. Parrish par. 2-3.

9. Not disputed subject to Objection.  
Improper Opinion (See Objection  
nos. 8-12 )

10. Not disputed.

11. Disputed.. Decl. J. Hernandez in its  
entirety; Decl. J. Nix in its entirety;  
Decl. M. Parrish in its entirety.

12. Not disputed.

1 Material Facts in Support of Its Motion for Summary Adjudication in regards to each cause of  
2 action and claim in plaintiff Jose Hernandez' Second Amended Complaint:

3 **Adjudication No. 1: Hernandez' First Cause of Action fails as a matter of law because the**  
4 **Authority's Codes are not a Federal or State law, rule or regulation.**

5 This is not a proper issue for determination as a "summary adjudication" but an argument  
6 in favor of the adjudication of the first cause of action. The legal importance of the argument is  
7 accordingly addressed in Hernandez' points and authorities.

8 **DEF'S ALLEGED UNDISPUTED MATERIAL**  
9 **FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/**  
**SUPPORTING EVIDENCE**

10 13. The Second Amended Complaint  
11 alleges that Hernandez disclosed  
12 violations of the Authority's Codes.

13. Not disputed.

13 Second Amended Complaint 7:26-27;  
14 8:17-19; 9:7-8; 10:11-14

15 14. The Authority's Code contains  
16 administrative, regulatory and  
17 revenue ordinances of the San Diego  
18 County Regional Airport Authority.

14. Not disputed.

15 Exhibit 7 [Section 1.01 (a)] of the  
16 Authority's code

17 15. The Authority is a local government  
18 entity.

15. Not disputed.

19 Public Utilities Code section 170002

20 **Adjudication No. 2: Hernandez' First Cause of Action fails as a matter of law because**  
21 **Hernandez could not have had a reasonable belief that he was disclosing activity made**  
22 **unlawful by a federal or state law, rule or regulation.**

23 This is not a proper issue for determination as a "summary adjudication" but an argument  
24 in favor of the adjudication of the first cause of action. The legal importance of the argument is  
25 accordingly addressed in Hernandez' points and authorities.

**DEF'S ALLEGED UNDISPUTED MATERIAL  
FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/  
SUPPORTING EVIDENCE**

16. Hernandez alleges that he disclosed that the Authority overpaid for the General Dynamics Lease.

16. Not disputed

Hernandez Depo. 393:6-17 [Exh. 1].

17. The terms of the General Dynamics Lease are set by statute.

17. Disputed. The statute leaves terms undecided following January 2006. PUC section 170056(f)(1)-(3)

See Public Utilities Code section 170056(f)(1); Hernandez Depo. 391:14-392:24 and 397:8-11 [Exh. 1].

18. Hernandez alleges that he disclosed that the Authority overpaid for the Teledyne Ryan lease.

18. Not disputed

Hernandez Depo. 410:3-11 and 408:3-25 [Exh. 1].

19. Hernandez alleges that he disclosed that unless the Authority received space from Host, it would not be able to comply with the ADA regulations on the restroom project, and thus the project was held up.

19. Not disputed

Hernandez Depo. 343:16-344:4 and 357:10-358:6 [Exh. 1]

20. Hernandez alleges that he disclosed that LPi underbid the Authority and that LPi double-billed workers' compensation.

20. Not disputed

Hernandez Depo. 521:3-20 [Exh. 1]

**Adjudication No. 3: Hernandez' First Cause of Action fails as a matter of law because there is no causal connection between Hernandez' alleged protected activities and his termination because the disclosures were too remote in time.**

This is not a proper issue for determination as a "summary adjudication" but an argument in favor of the adjudication of the first cause of action. The legal importance of the argument is accordingly addressed in Hernandez' points and authorities.

**DEF'S ALLEGED UNDISPUTED MATERIAL  
FACT/SUPPORTING EVIDENCE****PL'S RESPONSE/  
SUPPORTING EVIDENCE**

21. Hernandez first made the disclosure regarding the restroom project in 2003 or 2004.

21. Not disputed

Hernandez Depo. 357:19-24 [Exh. 1].

22. Hernandez first made the disclosure regarding the General Dynamics Lease in approximately 2003.

22. Not disputed

Hernandez 393:1-24 [made the disclosure prior to the ratification of the lease]; Hernandez 396:9-16 [original discussions were as the terms of the agreement were being discussed with the Port]; Hernandez 386:18-22 [General Dynamics' lease was negotiated around the time that the Authority split from the Port] .

23. Hernandez first made the disclosure regarding the Teledyne Ryan Lease in late 2003 or 2004.

23. Not disputed

Hernandez 410:3-16 [Hernandez disclosed to Sexton immediately as they began to make the designs for the SAN Park project]; Hernandez 408:3-14 [developed the design documents for the SAN Park project in late 2003 or 2004]

24. Hernandez first made the disclosure regarding LPi's expenses in 2004.

24. Not disputed

Hernandez 493:24-495:15 [Hernandez made his first disclosure at the three-month or six-month submittal]; Sexton Dec. 3:15-17 [the LPi contract began in January 2004]

25. The investigation into alleged benefits received by Hernandez began in approximately November 2005.

25. Not disputed

Bowens Dec. 2:7-22; Woodson Dec. 2:5-8.

26. Hernandez' employment with the Authority ended in February 2006.

26. Not disputed

Hernandez Depo. 114:19-24 [Exh. 1].



1 **Adjudication No. 4: Hernandez' First Cause of Action fails as a matter of law because**  
 2 **there is no causal connection between Hernandez' alleged protected activities and his**  
 3 **termination because the decisionmaker was not aware of the protected activities.**

4 This is not a proper issue for determination as a "summary adjudication" but an argument  
 5 in favor of the adjudication of the first cause of action. The legal importance of the argument is  
 6 accordingly addressed in Hernandez' points and authorities

7 **DEF'S ALLEGED UNDISPUTED MATERIAL**  
 8 **FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/**  
**SUPPORTING EVIDENCE**

9 27. Thella Bowens made the decision to  
 10 terminate Hernandez' employment.

27. Not disputed to the extend that she is  
 included among others who  
 contributed to the decision.

Bowens Dec. 3:1-10

11 28. Bowens was unaware of any of  
 12 Hernandez' alleged protected  
 activities.

28. Disputed. Decl. J. Hernandez ¶ 4;  
 Decl. J. Hernandez ¶ 5; Decl. J.  
 Hernandez ¶ 7.

Bowens Dec. 3:18-4:8

14 **Adjudication No. 5: Hernandez' First Cause of Action fails as a matter of law because the**  
 15 **Authority had a legitimate non-retaliatory business reason for terminating Hernandez'**  
 16 **employment.**

17 This is not a proper issue for determination as a "summary adjudication" but an argument  
 18 in favor of the adjudication of the first cause of action. The legal importance of the argument is  
 19 accordingly addressed in Hernandez' points and authorities.

20 **DEF'S ALLEGED UNDISPUTED MATERIAL**  
 21 **FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/**  
**SUPPORTING EVIDENCE**

22 29. Jose Hernandez became the Director  
 23 of Landside Operations for defendant  
 San Diego County Regional Airport  
 Authority (the "Authority") on or  
 24 about October 2003.

29. Not disputed

25 Hernandez Depo. 93:16-25 and  
 114:25-115:14 [Exh. 1]. Exhibit 16.

30. Article 2, Part 2.0, Section 2.10(b) of the Authority's Ethics Code provides in part:

Restrictions on Benefits

(4) No Board member or employee of the Authority shall request a benefit from any person or entity or accept any benefit intended to influence official duties.

(5) No Board member or employee of the Authority shall accept anything of value from anyone, other than the Authority or another Board member or employee, for doing his or her job.

(6) No Board member or employee of the Authority shall accept benefits aggregating more than one-half ( $\frac{1}{2}$ ) the amount of gifts permitted under the California Political Reform Act in any calendar year from any single source:

(A) That the Board member or employee knows or should know is doing business with the Authority or intends to do business with the Authority or has done business with the Authority during the previous 12 months; or

(B) That the Board member or employee knows or should know has or is seeking a license, permit, grant or benefit from the Authority; or

(C) That the Board member or employee knows or should know is an agent (whether compensated or not) of any person or entity described in Subsections (A) or (B)

Exhibit 3, pp. 12-13.

30. Not disputed

31. In approximately October or November 2005, two Authority employees advised Thella Bowens that they believed that Hernandez was behaving unethically and receiving benefits from the Authority's vendors.

31. Disputed.

Bowens Dec. p. 2, lines 7-19 (hereinafter noted as "Page:Line Numbers")

1 32. In November 2005, Bowens asked  
 2 the Authority's Vice President of  
 3 Administration, Jeffrey Woodson, to  
 4 have an outside investigator conduct  
 an investigation into the allegations  
 that Hernandez had received benefits  
 from the Authority's vendors.

32. Not disputed

5 Woodson Dec. 2:5-8; Bowens Dec. 2:20-22

6 33. Woodson approved the retention of  
 7 Luce, Forward, Hamilton & Scripps  
 ("Luce Forward") to conduct an  
 8 investigation into the allegations  
 made regarding Hernandez receiving  
 9 benefits from the Authority's  
 vendors.

33. Not disputed

10 Swan Dec. 2:9-12; Woodson Dec. 2:9-13

11 34. Edward Patrick Swan, Jr. of Luce  
 12 Forward conducted an investigation,  
 with assistance from John  
 13 Gamberzky, regarding the allegations  
 that Hernandez received benefits  
 14 from the Authority's vendors.

34. Not disputed

15 Swan Dec. 3:1-10.

16 35. Hernandez admits that he received  
 17 four non-revenue tickets from  
 Hawaiian Airlines in 2004, and that  
 18 he knew Hawaiian Airlines was  
 doing business with the Authority at  
 the time he received the tickets.

35. Disputed. He received the tickets  
 from Janet Nix, in her capacity as a  
 personal friend. Decl. J. Hernandez  
 par. 11; Decl. J. Nix par. 11.

19 Swan Dec. 3:11-12; Hernandez Depo.  
 20 198:8-200:17 and 280:1-14 [Exh. 1]

21 36. Hernandez admits that he received at  
 22 least two buddy passes from  
 Southwest Airlines in 2004 for his  
 23 children, and that he knew Southwest  
 Airlines was doing business with the  
 24 Authority at the time he received the  
 tickets.

36. Disputed. He received the tickets  
 from Mike Parrish, in his capacity as  
 a personal friend. Decl. J. Hernandez  
 par. 9-10; Decl. M. Parrish par. 2-3.

25 Hernandez Depo. 191:8-20 and 281:6-12  
 [Exh. 1].

1 37. Mr. Swan concluded in his  
2 investigation that there was sufficient  
3 evidence that Hernandez had  
4 accepted benefits from Authority  
5 vendors and contractors. He also  
6 concluded that there was sufficient  
7 evidence that Hernandez had  
8 violated Section 2.10 of the  
9 Authority's Ethics Code.

10 Swan Dec. 4:6-14; Exhibit 4, pp. 2 and  
11 20-21; Exh. 3, pp. 12-13.

12 38. Mr. Swan prepared a written report  
13 of his findings and sent them to  
14 Thella Bowens on or about January  
15 19, 2006.

16 Swan Dec. 3:25-4:2; Exhibit 4

17 39. After reviewing the findings  
18 contained in Mr. Swan's January 19,  
19 2006 report, and upon the  
20 recommendation of Jeffrey Woodson  
21 and the Authority's Director of  
22 Human Resources, Diane Richards,  
23 Bowens determined that Hernandez'  
24 employment should be terminated  
25 because it appeared that he had  
26 accepted benefits in violation of  
27 Section 2.10 of the Authority's  
28 Ethics Code.

Bowens Dec. 3:1-10; Exh. 3, pp. 12-13  
[Ethics Code]; Woodson Dec. 2:25-3:4

**Adjudication No. 6: Hernandez' First Cause of Action fails as a matter of law because he  
has no evidence of pretext.**

This is not a proper issue for determination as a "summary adjudication" but an argument  
in favor of the adjudication of the first cause of action. The legal importance of the argument is  
accordingly addressed in Hernandez' points and authorities.

37. Not disputed subject to Objection.  
Improper Opinion (See Objection  
nos. 8-12 )

38. Not disputed.

39. Disputed.. Decl. J. Hernandez in its  
entirety; Decl. J. Nix in its entirety;  
Decl. M. Parrish in its entirety.

**DEF'S ALLEGED UNDISPUTED MATERIAL  
FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/  
SUPPORTING EVIDENCE**

40. Jose Hernandez became the Director of Landside Operations for defendant San Diego County Regional Airport Authority (the "Authority") on or about October 2003.

40. Not disputed

Hernandez Depo. 93:16-25 and 114:25-115:14 [Exh. 1]. Exhibit 16.

41. Article 2, Part 2.0, Section 2.10(b) of the Authority's Ethics Code provides in part:

41. Not disputed

**Restrictions on Benefits**

(7) No Board member or employee of the Authority shall request a benefit from any person or entity or accept any benefit intended to influence official duties.

(8) No Board member or employee of the Authority shall accept anything of value from anyone, other than the Authority or another Board member or employee, for doing his or her job.

(9) No Board member or employee of the Authority shall accept benefits aggregating more than one-half (½) the amount of gifts permitted under the California Political Reform Act in any calendar year from any single source:

(A) That the Board member or employee knows or should know is doing business with the Authority or intends to do business with the Authority or has done business with the Authority during the previous 12 months; or

(B) That the Board member or employee knows or should know has or is seeking a license, permit, grant or benefit from the Authority; or

(C) That the Board member or employee knows or should know is an agent (whether compensated or not) of any person or entity described in Subsections (A) or (B)

Exhibit 3, pp. 12-13.

42. In approximately October or November 2005, two Authority employees advised Thella Bowens that they believed that Hernandez was behaving unethically and receiving benefits from the Authority's vendors.

42. Not disputed

Bowens Dec. p. 2, lines 7-19 (hereinafter noted as "Page:Line Numbers")

43. In November 2005, Bowens asked the Authority's Vice President of Administration, Jeffrey Woodson, to have an outside investigator conduct an investigation into the allegations that Hernandez had received benefits from the Authority's vendors.

43. Not disputed

Woodson Dec. 2:5-8; Bowens Dec. 2:20-22

44. Woodson approved the retention of Luce, Forward, Hamilton & Scripps ("Luce Forward") to conduct an investigation into the allegations made regarding Hernandez receiving benefits from the Authority's vendors.

44. Not disputed

Swan Dec. 2:9-12; Woodson Dec. 2:9-13

45. Edward Patrick Swan, Jr. of Luce Forward conducted an investigation, with assistance from John Gamberzky, regarding the allegations that Hernandez received benefits from the Authority's vendors.

45. Not disputed

Swan Dec. 3:1-10.

46. Hernandez admits that he received four non-revenue tickets from Hawaiian Airlines in 2004, and that he knew Hawaiian Airlines was doing business with the Authority at the time he received the tickets.

46. Disputed. He received the tickets from Janet Nix, in her capacity as a personal friend. Decl. J. Hernandez par. 11; Decl. J. Nix par. 11.

Swan Dec. 3:11-12; Hernandez Depo. 198:8-200:17 and 280:1-14 [Exh. 1]

47. Hernandez admits that he received at least two buddy passes from Southwest Airlines in 2004 for his children, and that he knew Southwest Airlines was doing business with the Authority at the time he received the tickets.

47. Disputed. He received the tickets from Mike Parrish, in his capacity as a personal friend. Decl. J. Hernandez par. 9-10; Decl. M. Parrish par. 2-3.

Hernandez Depo. 191:8-20 and 281:6-12 [Exh. 1].

48. Mr. Swan concluded in his investigation that there was sufficient evidence that Hernandez had accepted benefits from Authority vendors and contractors. He also concluded that there was sufficient evidence that Hernandez had violated Section 2.10 of the Authority's Ethics Code.

48. Not disputed subject to Objection. Improper Opinion (See Objection nos. 8-12 )

Swan Dec. 4:6-14; Exhibit 4, pp. 2 and 20-21; Exh. 3, pp. 12-13.

49. Mr. Swan prepared a written report of his findings and sent them to Thella Bowens on or about January 19, 2006.

49. Not disputed

Swan Dec. 3:25-4:2; Exhibit 4

50. After reviewing the findings contained in Mr. Swan's January 19, 2006 report, and upon the recommendation of Jeffrey Woodson and the Authority's Director of Human Resources, Diane Richards, Bowens determined that Hernandez' employment should be terminated because it appeared that he had accepted benefits in violation of Section 2.10 of the Authority's Ethics Code.

50. Disputed. Decl. J. Hernandez in its entirety; Decl. J. Nix in its entirety; Decl. M. Parrish in its entirety.

Bowens Dec. 3:1-10; Exh. 3, pp. 12-13 [Ethics Code]; Woodson Dec. 2:25-3:4

**Adjudication No. 7: Hernandez' First Cause of Action under Labor Code section 1102.5(a) fails as a matter of law because Hernandez has not identified a rule, regulation, or policy made, adopted or enforced by the Authority that prevents an employee from disclosing information to a governmental agency.**



This is not a proper issue for determination as a "summary adjudication" but an argument in favor of the adjudication of the first cause of action. The legal importance of the argument is accordingly addressed in Hernandez' points and authorities. For the Court's convenience, this opposition does not allege a violation of 1102.5(a), but focuses upon the 1102.5(b) violation.

**DEF'S ALLEGED UNDISPUTED MATERIAL  
FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/  
SUPPORTING EVIDENCE**

51. Hernandez alleges that he was advised to keep the investigation confidential.

51. Not disputed

Hernandez 840:12-15 [Exh. 2]; Second Amended Complaint p. 11, lines 26-28.

**Adjudication No. 8: Hernandez' First Cause of Action under Labor Code section 1102.5(a) fails as a matter of law because any instructions regarding confidentiality were made to implement the protection of the attorney-client privilege (See Labor Code section 1102.5(g)).**

This is not a proper issue for determination as a "summary adjudication" but an argument in favor of the adjudication of the first cause of action. The legal importance of the argument is accordingly addressed in Hernandez' points and authorities. For the Court's convenience, this opposition does not allege a violation of 1102.5(a), but focuses upon the 1102.5(b) violation.

**DEF'S ALLEGED UNDISPUTED MATERIAL  
FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/  
SUPPORTING EVIDENCE**

52. Mr. Swan advised Hernandez that he should keep the interview confidential because the investigation was an attorney-client privileged investigation.

52. Disputed to the extent that the attorney-client investigation is pretext to silence Hernandez in violation of Section 1102.5(a)

Swan 2:26-28.

**Adjudication No. 9: Hernandez' First Cause of Action fails as a matter of law under Labor Code section 1102.5(c) because Hernandez did not refuse to participate in any unlawful activity.**

This is not a proper issue for determination as a "summary adjudication" but an argument in favor of the adjudication of the first cause of action. The legal importance of the argument is

1 accordingly addressed in Hernandez' points and authorities. For the Court's convenience, this  
 2 opposition does not allege a violation of 1102.5(a), but focuses upon the 1102.5(b) violation.

3 **DEF'S ALLEGED UNDISPUTED MATERIAL**  
 4 **FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/**  
**SUPPORTING EVIDENCE**

53. Hernandez did not refuse to  
 5 participate in any activity because he  
 6 thought it was unlawful or illegal.

53. Not disputed

7 Hernandez Depo. 891:5-15 [Exh. 1].)

8 **Adjudication No. 10: The Authority is immune from Hernandez' Labor Code section**  
 9 **1102.5 cause of action under Government Code section 821.6**

10 This is not a proper issue for determination as a "summary adjudication" but an argument  
 11 in favor of the adjudication of the first cause of action. The legal importance of the argument is  
 12 accordingly addressed in Hernandez' points and authorities.

13 **DEF'S ALLEGED UNDISPUTED MATERIAL**  
 14 **FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/**  
**SUPPORTING EVIDENCE**

15 54. Hernandez alleges harm in his  
 16 Second Amended Complaint arising  
 17 out of the Authority's investigation  
 18 of his activities and his resulting  
 19 termination.

54. Not disputed

20 See Second Amended Complaint generally,  
 21 including paragraphs 23-30.

22 55. In November 2005, Bowens asked  
 23 the Authority's Vice President of  
 24 Administration, Jeffrey Woodson, to  
 25 have an outside investigator conduct  
 26 an investigation into the allegations  
 27 that Hernandez had received benefits  
 28 from the Authority's vendors.

55. Not disputed

Woodson Dec. 2:5-8; Bowens Dec. 2:20-22

- 1 56. Woodson approved the retention of 56. Not disputed  
2 Luce, Forward, Hamilton & Scripps  
3 ("Luce Forward") to conduct an  
4 investigation into the allegations  
5 made regarding Hernandez receiving  
6 benefits from the Authority's  
7 vendors.  
8  
9 Swan Dec. 2:9-12; Woodson Dec. 2:9-13  
10  
11 57. Edward Patrick Swan, Jr. of Luce 57. Not disputed  
12 Forward conducted an investigation,  
13 with assistance from John  
14 Gamberzky, regarding the allegations  
15 that Hernandez received benefits  
16 from the Authority's vendors.  
17  
18 Swan Dec. 3:1-10.  
19  
20 58. Mr. Swan concluded in his 58. Not disputed subject to Objection.  
21 investigation that there was sufficient Improper Opinion (See Objection  
22 evidence that Hernandez had nos. 8-12 )  
23 accepted benefits from Authority  
24 vendors and contractors. He also  
25 concluded that there was sufficient  
26 evidence that Hernandez had  
27 violated Section 2.10 of the  
28 Authority's Ethics Code.  
29  
30 Swan Dec. 4:6-14; Exhibit 4, pp. 2 and  
31 20-21; Exh. 3, pp. 12-13.  
32  
33 59. Mr. Swan prepared a written report 59. Not disputed  
34 of his findings and sent them to  
35 Thella Bowens on or about January  
36 19, 2006.  
37  
38 Swan Dec. 3:25-4:2; Exhibit 4

60. After reviewing the findings contained in Mr. Swan's January 19, 2006 report, and upon the recommendation of Jeffrey Woodson and the Authority's Director of Human Resources, Diane Richards, Bowens determined that Hernandez' employment should be terminated because it appeared that he had accepted benefits in violation of Section 2.10 of the Authority's Ethics Code.

Bowens Dec. 3:1-10; Exh. 3, pp. 12-13 [Ethics Code]; Woodson Dec. 2:25-3:4

60. Disputed.. Decl. J. Hernandez in its entirety; Decl. J. Nix in its entirety; Decl. M. Parrish in its entirety.

**Adjudication No. 11: This court lacks jurisdiction over Hernandez' Labor Code section 1102.5 cause of action because he failed to exhaust his administrative remedies under Labor Code sections 98.6 and 98.7**

This is not a proper issue for determination as a "summary adjudication" but an argument in favor of the adjudication of the first cause of action. The legal importance of the argument is accordingly addressed in Hernandez' points and authorities.

**DEF'S ALLEGED UNDISPUTED MATERIAL FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/ SUPPORTING EVIDENCE**

61. Hernandez has not alleged that he filed a claim with the Labor Commissioner.

61. Not disputed

See Second Amended Complaint.

**GENERAL DYNAMICS DISCLOSURE:**

**Adjudication No. 12: Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the General Dynamics' lease, fails as a matter of law because Hernandez could not have had a reasonable belief that the General Dynamics' lease was unlawful.**

This is not a proper issue for determination as a "summary adjudication" but an argument in favor of the adjudication of the first cause of action. The legal importance of the argument is accordingly addressed in Hernandez' points and authorities.

**DEF'S ALLEGED UNDISPUTED MATERIAL  
FACT/SUPPORTING EVIDENCE****PL'S RESPONSE/  
SUPPORTING EVIDENCE**

62. Hernandez alleges that he disclosed that the Authority overpaid for the General Dynamics Lease.

62. Not disputed

Hernandez Depo. 393:6-17 [Exh. 1].

63. The terms of the General Dynamics Lease are set by statute.

63. Disputed. Some terms of the lease are left open by statute. PUC 170056(f)(1)-(3)

See Public Utilities Code section 170056(f)(1); Hernandez Depo 391:14-392:24 and 397:8-11 [Exh. 1].

**Adjudication No. 13: Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the General Dynamics' lease, fails as a matter of law because Hernandez has not identified a state or federal statute, rule or regulation of which he disclosed a violation.**

This is not a proper issue for determination as a "summary adjudication" but an argument in favor of the adjudication of the first cause of action. The legal importance of the argument is accordingly addressed in Hernandez' points and authorities.

**DEF'S ALLEGED UNDISPUTED MATERIAL  
FACT/SUPPORTING EVIDENCE****PL'S RESPONSE/  
SUPPORTING EVIDENCE**

64. Hernandez alleges that he disclosed that the Authority overpaid for the General Dynamics Lease.

64. Not disputed

Hernandez Depo. 393:6-17 [Exh. 1].

65. The terms of the General Dynamics Lease are set by statute.

65. Disputed. Some terms of the lease are left open by statute. PUC 170056(f)(1)-(3)

See Public Utilities Code section 170056(f)(1); Hernandez Depo. 391:14-392:24 and 397:8-11 [Exh. 1].

**Adjudication No. 14: Hernandez' First Cause of Action fails as matter of law, insofar as it is based on any alleged disclosure regarding the General Dynamics' lease, because there is no causal connection between his alleged protected activity and his termination.**

///

1 This is not a proper issue for determination as a "summary adjudication" but an argument  
 2 in favor of the adjudication of the first cause of action. The legal importance of the argument is  
 3 accordingly addressed in Hernandez' points and authorities.

4 **DEF'S ALLEGED UNDISPUTED MATERIAL**  
**FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/**  
**SUPPORTING EVIDENCE**

5 66. Hernandez first made the disclosure  
 6 regarding the General Dynamics  
 7 Lease in approximately 2003.

66. Not disputed

8 Hernandez 393:1-24 [made the disclosure  
 9 prior to the ratification of the lease];  
 10 Hernandez 396:9-16 [original discussions  
 11 were as the terms of the agreement were  
 12 being discussed with the Port]; Hernandez  
 13 386:18-22 [General Dynamics' lease was  
 14 negotiated around the time that the Authority  
 15 split from the Port]

12 67. Hernandez' employment with the  
 13 Authority ended in February 2006.

67. Not disputed

14 Hernandez Depo. 114:19-24 [Exh. 1].

15 68. Thella Bowens made the decision to  
 16 terminate Hernandez' employment.

68. Not disputed to the extend that she is  
 included among others who  
 contributed to the decision.

16 Bowens Dec. 3:1-10

17 **Teledyne Ryan Disclosure:**

18 **Adjudication No. 15: Hernandez' First Cause of Action under Labor Code section 1102.5,**  
 19 **insofar as it is based on any alleged disclosure regarding the Teledyne Ryan lease, fails as a**  
 20 **matter of law because Hernandez could not have had a reasonable belief that the Teledyne**  
 21 **Ryan lease was unlawful.**

22 This is not a proper issue for determination as a "summary adjudication" but an argument  
 23 in favor of the adjudication of the first cause of action. The legal importance of the argument is  
 24 accordingly addressed in Hernandez' points and authorities.

**DEF'S ALLEGED UNDISPUTED MATERIAL  
FACT/SUPPORTING EVIDENCE****PL'S RESPONSE/  
SUPPORTING EVIDENCE**

69. Hernandez alleges that he disclosed  
that the Authority overpaid for the  
Teledyne Ryan lease.

69. Not disputed

Hernandez Depo. 410:3-11 and 408:3-25  
[Exh. 1].

**Adjudication No. 16: Hernandez' First Cause of Action under Labor Code section 1102.5,**  
insofar as it is based on any alleged disclosure regarding the Teledyne Ryan lease, fails as a  
matter of law because Hernandez has not identified a state or federal statute, rule or  
regulation of which he disclosed a violation.

This is not a proper issue for determination as a "summary adjudication" but an argument  
in favor of the adjudication of the first cause of action. The legal importance of the argument is  
accordingly addressed in Hernandez' points and authorities.

**DEF'S ALLEGED UNDISPUTED MATERIAL  
FACT/SUPPORTING EVIDENCE****PL'S RESPONSE/  
SUPPORTING EVIDENCE**

70. Hernandez alleges that he disclosed  
that the Authority overpaid for the  
Teledyne Ryan lease.

70. Not disputed

Hernandez Depo. 410:3-11 and 408:3-25  
[Exh. 1].

71. The Authority's Code contains  
administrative, regulatory and  
revenue ordinances of the San Diego  
County Regional Airport Authority.

71. Not disputed

Exhibit 7 [Section 1.01 (a)]

72. The Authority is a local government  
entity.

72. Not disputed

Public Utilities Code section 170002

**Adjudication No. 17: Hernandez' First Cause of Action fails as matter of law, insofar as it**  
is based on any alleged disclosure regarding the Teledyne Ryan lease, because there is no  
causal connection between his alleged protected activity and his termination.

This is not a proper issue for determination as a "summary adjudication" but an argument



1 in favor of the adjudication of the first cause of action. The legal importance of the argument is  
2 accordingly addressed in Hernandez' points and authorities.

3 **DEF'S ALLEGED UNDISPUTED MATERIAL**  
4 **FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/**  
**SUPPORTING EVIDENCE**

5 73. At the time that the Authority  
6 entered into the lease on the  
7 Teledyne Ryan property, it was  
8 aware that there was contamination  
9 on the property.

73. Not disputed

10 Hernandez Depo. 406:4-24 [Exh. 1]

11 74. Hernandez did not speak to anyone  
12 regarding the contamination on the  
13 property until after the Authority  
14 entered into the lease with regard to  
15 the Teledyne Ryan property.

74. Not disputed

16 Hernandez Depo. 406:25-408:2 [Exh. 1]

17 75. Paul Manasjan also expressed  
18 dissatisfaction regarding the  
19 Teledyne Ryan Lease.

75. Not disputed

20 Hernandez Depo. 413:22-414:6 [Exh. 1]

21 76. Paul Manasjan is still employed at  
22 the Authority.

76. Not disputed

23 Woodson Dec. 3:19-20.

24 77. Hernandez first made the disclosure  
25 regarding the Teledyne Ryan Lease  
26 in late 2003 or 2004.

77. Not disputed

27 Hernandez 410:3-16 [Hernandez disclosed  
28 to Sexton immediately as they began to  
make the designs for the SAN Park project];  
Hernandez 408:3-14 [developed the design  
documents for the SAN Park project in late  
2003 or 2004]

78. Hernandez' employment with the  
Authority ended in February 2006.

78. Not disputed

Hernandez Depo. 114:19-24 [Exh. 1].

79. Thella Bowens made the decision to terminate Hernandez' employment.

79. Not disputed to the extend that she is included among others who contributed to the decision.

Bowens Dec. 3:1-10

### **RESTROOM PROJECT DISCLOSURE:**

**Adjudication No. 18:** Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the restroom project, fails as a matter of law because Hernandez could not have had a reasonable belief that the restroom project was unlawful.

This is not a proper issue for determination as a "summary adjudication" but an argument in favor of the adjudication of the first cause of action. The legal importance of the argument is accordingly addressed in Hernandez' points and authorities.

### **DEF'S ALLEGED UNDISPUTED MATERIAL FACT/SUPPORTING EVIDENCE**

### **PL'S RESPONSE/ SUPPORTING EVIDENCE**

80. Hernandez alleges that he disclosed that unless the Authority received space from Host, it would not be able to comply with the ADA regulations on the restroom project, and thus the project was held up.

80. Not disputed

Hernandez Depo. 343:16-344:4 and 357:10-358:6 [Exh. 1]

**Adjudication No. 19:** Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the restroom project, fails as a matter of law because Hernandez admits that the Authority did not violate the ADA, nor did it express its intention to violate the ADA.

This is not a proper issue for determination as a "summary adjudication" but an argument in favor of the adjudication of the first cause of action. The legal importance of the argument is accordingly addressed in Hernandez' points and authorities.

**DEF'S ALLEGED UNDISPUTED MATERIAL  
FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/  
SUPPORTING EVIDENCE**

81. The Authority never indicated that it did not want to comply with the ADA, nor did the Authority at any time violate the ADA.

81. Not disputed

Hernandez 366:12-367:21; 371:15-372:22.

**Adjudication No. 20: Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding the restroom project, fails as a matter of law because Hernandez has not identified a state or federal statute, rule or regulation of which he disclosed a violation.**

This is not a proper issue for determination as a "summary adjudication" but an argument in favor of the adjudication of the first cause of action. The legal importance of the argument is accordingly addressed in Hernandez' points and authorities.

**DEF'S ALLEGED UNDISPUTED MATERIAL  
FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/  
SUPPORTING EVIDENCE**

82. Hernandez alleges that he disclosed that unless the Authority received space from Host, it would not be able to comply with the ADA regulations on the restroom project, and thus the project was held up.

82. Not disputed

Hernandez Depo. 343:16-344:4 and 357:10-358:6 [Exh. 1]

83. The Authority's Code contains administrative, regulatory and revenue ordinances of the San Diego County Regional Airport Authority.

83. Not disputed

Exhibit 7 [Section 1.01 (a)]

84. The Authority is a local government entity.

84. Not disputed

Public Utilities Code section 170002

**Adjudication No. 21: Hernandez' First Cause of Action, insofar as it is based on any alleged disclosure regarding the restroom project, fails as matter of law because there is no causal connection between his alleged protected activity and his termination.**

1 This is not a proper issue for determination as a "summary adjudication" but an argument  
 2 in favor of the adjudication of the first cause of action. The legal importance of the argument is  
 3 accordingly addressed in Hernandez' points and authorities.

4 **DEF'S ALLEGED UNDISPUTED MATERIAL**  
**FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/**  
**SUPPORTING EVIDENCE**

5 85. Hernandez first made the disclosure  
 6 regarding the restroom project in  
 7 2003 or 2004.

85. Not disputed

8 Hernandez Depo. 357:19-24 [Exh. 1].

9 86. Parsons first raised the issue  
 10 regarding the necessity of taking the  
 11 30 square feet of space in 2002.

86. Not disputed

12 Hernandez Depo. 347:16-348:3 [Exh. 1]

13 87. The investigation into alleged  
 14 benefits received by Hernandez  
 15 began in approximately November  
 16 2005.

87. Not disputed

17 Bowens Dec. 2:7-22; Woodson Dec. 2:5-8.

18 88. Hernandez' employment with the  
 19 Authority ended in February 2006.

88. Not disputed

20 Hernandez Depo. 114:19-24 [Exh. 1].

21 89. Thella Bowens made the decision to  
 22 terminate Hernandez' employment.

89. Not disputed to the extent that she is  
 included among others who  
 contributed to the decision.

23 Bowens Dec. 3:1-10

24 **LPI DISCLOSURE**

25 **Adjudication No. 22: Hernandez' First Cause of Action under Labor Code section 1102.5,**  
 26 **insofar as it is based on any alleged disclosure regarding LPI, fails as a matter of law**  
 27 **because Hernandez could not have had a reasonable belief that he disclosed unlawful acts.**

28 This is not a proper issue for determination as a "summary adjudication" but an argument  
 in favor of the adjudication of the first cause of action. The legal importance of the argument is  
 accordingly addressed in Hernandez' points and authorities.

**DEF'S ALLEGED UNDISPUTED MATERIAL  
FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/  
SUPPORTING EVIDENCE**

90. Hernandez alleges that he disclosed that LPi underbid the Authority and that LPi double-billed workers' compensation.

90. Not disputed

Hernandez Depo. 521:3-20 [Exh. 1]

**Adjudication No. 23: Hernandez' First Cause of Action under Labor Code section 1102.5, insofar as it is based on any alleged disclosure regarding LPi, fails as a matter of law because Hernandez has not identified a state or federal statute, rule or regulation of which he disclosed a violation.**

This is not a proper issue for determination as a "summary adjudication" but an argument in favor of the adjudication of the first cause of action. The legal importance of the argument is accordingly addressed in Hernandez' points and authorities.

**DEF'S ALLEGED UNDISPUTED MATERIAL  
FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/  
SUPPORTING EVIDENCE**

91. The Second Amended Complaint alleges that Hernandez disclosed violations of the Authority's Codes.

91. Not disputed

Second Amended Complaint 7:26-27; 8:17-19; 9:7-8; 10:11-14

92. The Authority's Code contains administrative, regulatory and revenue ordinances of the San Diego County Regional Airport Authority.

92. Not disputed

Exhibit 7 [Section 1.01 (a)]

93. The Authority is a local government entity.

93. Not disputed

Public Utilities Code section 170002

**Adjudication No. 24: Hernandez' First Cause of Action fails as matter of law, insofar as it is based on any alleged disclosure regarding LPi, because there is no causal connection between his alleged protected activity and his termination.**

This is not a proper issue for determination as a "summary adjudication" but an argument

1 in favor of the adjudication of the first cause of action. The legal importance of the argument is  
2 accordingly addressed in Hernandez' points and authorities.

3 **DEF'S ALLEGED UNDISPUTED MATERIAL**  
4 **FACT/SUPPORTING EVIDENCE**

**PL'S RESPONSE/**  
**SUPPORTING EVIDENCE**

5 94. Hernandez first made the disclosure  
6 regarding LPi's expenses in 2004.

94. Not disputed

7 Hernandez 493:24-495:15 [Hernandez made  
8 his first disclosure at the three-month or  
9 six-month submittal]; Sexton Dec. 3:15-17  
10 [the LPi contract began in January 2004]

11 95. The investigation into alleged  
12 benefits received by Hernandez  
13 began in approximately November  
14 2005.

95. Not disputed

15 Bowens Dec. 2:7-22; Woodson Dec. 2:5-8.

16 96. Hernandez' employment with the  
17 Authority ended in February 2006.

96. Not disputed


18 Hernandez Depo. 114:19-24 [Exh. 1].

19 97. Thella Bowens made the decision to  
20 terminate Hernandez' employment.

97. Not disputed to the extend that she is  
included among others who  
contributed to the decision.

21 Bowens Dec. 3:1-10

22 DATED: November 2, 2007

  
CATHRYN CHINN, Attorney for  
Plaintiff JOSE HERNANDEZ





1 Cathryn Chinn, Esq. (State Bar 93340)  
1901 First Avenue, Suite 400  
2 San Diego, California 92101  
Telephone (619) 234-9000  
3 Facsimile (619) 699-1159  
4

5 Attorney for Plaintiff  
JOSE HERNANDEZ  
6  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO, CENTRAL BRANCH, GENERAL UNLIMITED**

10 JOSE HERNANDEZ,

11 Plaintiff,

12 v.

13 SAN DIEGO COUNTY REGIONAL  
AIRPORT AUTHORITY, a public entity  
14 and DOES 1 through 12, Inclusive,

15 Defendants.  
16

Case No. : GIC 871979

PLAINTIFF JOSE HERNANDEZ'  
SEPARATE STATEMENT OF  
ADDITIONAL UNDISPUTED MATERIAL  
FACTS IN OPPOSITION TO DEFENDANT  
SAN DIEGO COUNTY REGIONAL  
AIRPORT AUTHORITY'S MOTION FOR  
SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, SUMMARY  
ADJUDICATION

DATE: November 16, 2007  
TIME: 1:30 p.m.  
DEPT.: 75  
JUDGE: HON. RICHARD E. STRAUSS  
ACTION FILED: 9/1/06  
TRIAL DATE: 1/4/08

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19  
20 Plaintiff JOSE HERNANDEZ presents his Separate Statement of Additional Undisputed  
21 Material Facts in Opposition to Defendant SAN DIEGO COUNTY REGIONAL AIRPORT  
22 AUTHORITY's Motion for Summary Judgment or, in the Alternative, Summary Adjudication,  
23 as follows:

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28 PL'S SEP. STATEMENT OF ADDIT. UNDISPUTED MATERIAL FACTS IN OPPOS. TO SDCRAA'S MSJ

**PLAINTIFF'S ADDITIONAL  
UNDISPUTED FACTS**

1. Plaintiff Jose Hernandez was hired in March 2001 as Manager of Ground Transportation. He then became Director of Landside Operations in 2003. His responsibilities included the management of airport parking and terminal facilities, and the development and adherence to a budget for the operation of those facilities.

2. He worked within a budget dictated by anticipated revenues from the management of Airport properties and facilities.

3. Hernandez reported directly to Theodore Sexton, Vice President of Operations, who reported to Thella Bowens.

4. Bryan Enarson, Vice President of Development, was a close confidant of Thella Bowens', and the lead negotiator on land lease contracts made with General Dynamics and Teledyne Ryan.

5. One of Hernandez' duties was the evaluation of a lease from the Port of property located on the north side of the Airport (General Dynamics property). The lease price contemplated the use of the property for parking, and revenues which would generate to the lease holder for 2100 stalls.

6. Hernandez' understanding of the lease was that the lease price was set by code for the years 2003, 2004 and 2005, and was thereafter subject to renegotiation.

7. Hernandez conducted an evaluation of the cash flow of the property when the lease came up for renegotiation, and determined that deficiencies in the property prevented from generating sufficient revenue to cover the lease price by at least \$2 million per year. The deficiency centered on the discovery of toxic waste in the soil beneath the property which severely limited the development of the property for parking.

**PL'S SUPPORTING EVIDENCE**

1. Decl. J. Hernandez ¶ 1; Depo. J. Hernandez 104: 8; 397:14-16

2. Decl. J. Hernandez ¶ 1; Depo J. Hernandez 397:3-7; 417:13

3. Decl. J. Hernandez ¶ 1

4. Decl. J. Hernandez ¶ 1; Depo. J. Hernandez 646:1-2; 388:8-12; 399:9-12; 400:1

5. Decl. J. Hernandez ¶ 2, Plaintiff's depo. 387:11-21, 389:15-17, 396:1-8

6. Decl. J. Hernandez ¶ 2; PUC § 170056(f)(1-3); Plaintiff's depo. 396:1-8; 397:8-11

7. Decl. J. Hernandez ¶ 2; Plaintiff's depo. 397:3-7

1 8. Hernandez communicated the  
2 deficiency in the property to Sexton and  
3 Bowens, and that the continuation of the  
lease at its existing rate would amount to a  
gift of public money to the Port.

4 9. Sexton and Bowens refused to  
5 renegotiate the terms of the lease. Enarson,  
6 then speaking on Bowens' behalf, justified  
the lease amount by stating, "that was the  
price for Thella's (Bowens') freedom."

7 10. Another of Hernandez' duties was  
8 the evaluation of a lease from the Port of  
property located at the west side of the  
9 Airport. (The Teledyne Ryan property) The  
10 lease of that property likewise contemplated  
the generation of revenues to cover the lease  
11 through its use as a parking lot. The lease  
had been negotiated by Enarson and was not  
subject to renegotiation.

12 11. Hernandez discovered this property  
13 was likewise contaminated and only a small  
portion of it was usable.

14 12. The contamination was grossly  
15 understated by the Port as a \$10 million  
expense (which the Port agreed to pay) when  
16 the real cost of remediation was in excess of  
\$30 million.

17 13. Hernandez then informed Sexton,  
18 Enarson and Bowens that the lease  
constituted an unwarranted expenditure of  
19 public money to the Port of over \$3 million  
per year.

20 14. Another of Hernandez' duties was to  
21 oversee the construction and/or maintenance  
of public facilities at the terminals, including  
22 public restrooms. Hernandez attempted to  
expand the size of the public restrooms to  
23 alleviate overcrowding in the east terminal  
and bring them into compliance with the  
24 state requirements that they be accessible by  
wheel chair, as required by the Americans  
with Disabilities Act (ADA).

25 15. He needed to annex 30 sq. ft. space  
26 from a concessionaire in order to comply  
with ADA requirements, but was told he  
27 could not do so by Enarson because Enarson  
28 had made handshake agreements with the  
concessionaires.

8. Decl. J. Hernandez ¶ 2; Plaintiff's  
depo. 393:6-24

9. Decl. J. Hernandez ¶ 3; Plaintiff's  
depo. 393:6-24; 393:21-24; 394:17-25

10. Decl. J. Hernandez ¶ 4; Plaintiff's  
depo. 388:8-12

11. Decl. J. Hernandez ¶ 4; Plaintiff's  
depo. 389:19-22, 390:3-5, 396:20-25

12. Decl. J. Hernandez ¶ 4; Plaintiff's  
depo. 407:2-408:2, 409:3-6

13. Decl. J. Hernandez ¶ 4; Plaintiff's  
depo. 417:14-22, 418:3-10

14. Decl. J. Hernandez ¶ 5; Plaintiff's  
depo. 349:23-350:5, 352:3-353:8, 336:20-  
21, 337:17-19

15. Decl. J. Hernandez ¶ 5; Plaintiff's  
depo. 333:10-17, 335:4-8, 339:6-8, 336:20-  
21, 343:20-25

1 16. He told Sexton, Enarson and Bowens  
2 that he did not believe Enarson had the  
3 authority to enter into such agreements with  
4 the concessionaires, and that Enarson's  
5 enforcement of the agreements constituted a  
6 gift to the concessionaires.

7 17. Another of Hernandez' duties was to  
8 help negotiate and monitor contracts for the  
9 management of parking services. The low  
10 bidder (based on "projected" reimbursable  
11 expenses) on a contract to manage the  
12 Airport's parking lots was Lindbergh  
13 Parking Incorporated (LPI).

14 18. Its bid was so low that  
15 Hernandez—who had managed parking  
16 himself—suspected the bid was insincere. He  
17 thereafter closely monitored the performance  
18 of the contract and noted LPI was  
19 overcharging the Authority approximately  
20 \$1 million to 1.5 million per year. This  
21 estimate was based, among other things, on  
22 the fact that LPI (1) did not lease new shuttle  
23 transportation vehicles as stated in its bid  
24 (but instead used older shuttles owned by  
25 LPI); (2) was seeking reimbursement for an  
26 unnecessary management position  
27 (owner/manager being paid for management  
28 work he did not perform); and (3) double-  
billing the Authority for workers'  
compensation insurance.

19 19. Hernandez reported these  
20 overcharges to Sexton, Enarson and  
21 Bowens, in October 2005 and placed LPI on  
22 a 90-day timetable to explain and justify all  
23 the expenses. He informed Sexton, Enarson  
24 and Bowens that the LPI contract constituted  
25 an unwarranted expenditure of public money  
26 to LPI.

27 20. The negotiating agent on behalf of  
28 LPI—Elizabeth Stump-Moore—was, however,  
a friend of Bowens'.

29 21. On November 2, 2005, Bowens  
30 engaged a law firm to investigate Hernandez  
31 for "ethics" violations associated with the  
32 receipt of benefits from the Authority's  
33 vendors. This was the first occasion in the  
34 history of the Authority that a law firm was  
35 retained to investigate an employee for  
36 alleged ethics violations.

16. Decl. J. Hernandez ¶ 5; Plaintiff's  
depo. 335:17-18; 336:1; 354:6-9; 368:10-16;  
377:1-4

17. Decl. J. Hernandez ¶ 6

18. Decl. J. Hernandez ¶ 6; Plaintiff's  
Depo. 478:16-22; 481:1-4; 483:2-6

19. Decl. J. Hernandez ¶ 7; Plaintiff's  
Depo. 505:11-23; 506:10-23; 508:7-13;  
511:16-23

20. Decl. J. Hernandez ¶ 7; Plaintiff's  
Depo. 488:25; 489:19-25; 490:10-15

21. Decl. J. Hernandez ¶ 7; Decl. P.  
Swan ¶ 3

1 22. The law firm, per report submitted  
2 by Patrick Swan, Esq., concluded Hernandez  
3 received (1) free rounds of golf; (2) airline  
4 tickets to Hawaii; and (3) charger football  
tickets, the value of which placed Hernandez  
in violation of the Ethics Code applicable to  
Authority employees.

5 23. Bowens claims to have terminated  
6 Hernandez' employment based on the  
conclusions in the report.

7 24. With regard to the "free rounds of  
8 golf," Hernandez cleared the trip with his  
9 boss, Sexton, before going, after disclosing  
the nature of the outing and that the golf  
rounds were supplied by Mike Parrish.

10 25. In the process, Sexton admitted he  
11 had attended the same golf outing under  
similar circumstances.

12 26. Hernandez compensated Parrish for  
13 the round by buying Parrish's lunch and  
14 dinner and by making gift contributions for  
the raffle. The net personal value to  
Hernandez was negative by over \$200.

15 27. Hernandez had a strong social  
16 relationship with Parrish, which included  
joint family outings and gatherings, dinners,  
barbecues and sporting events.

17 28. With regard to the Hawaii ticket,  
18 ticketing benefits were regarded by  
19 management as normal benefit of their  
20 workplace, and that Sexton assigned  
Hernandez responsibility on frequent  
occasions to obtain ticket upgrades for  
various employees and board members.  
21 Hernandez specifically discussed whether  
22 the practice was ethically acceptable and  
Sexton replied it was.

23 29. Notwithstanding the practice among  
24 Hernandez' superiors to receive passes and  
25 upgrades, Hernandez' receipt of those  
26 benefits was limited to gifts from personal  
27 friends. The tickets on Southwest came  
28 from Parrish. The tickets on Hawaiian Air  
came from Janet Nix, another personal  
friend, who told him she gave tickets like  
those to all kinds of friends having nothing  
to do with business.

22. Decl. P. Swan

23. Decl. T. Bowens ¶ 9

24. Decl. J. Hernandez ¶ 9; Plaintiff's  
depo. 158:18-22; 168:5-24

25. Decl. J. Hernandez ¶ 9

26. Decl. J. Hernandez ¶ 9; Decl. P.  
Swan; Plaintiff's depo. 159:14-19; 163:3-13;  
164:10-14

27. Decl. J. Hernandez ¶ 9; Decl. P.  
Swan; Decl. M. Parrish ¶ 2

28. Decl. J. Hernandez ¶ 10-11; Decl. P.  
Swan; Plaintiff's depo. 240:1-25; 602:20-25;  
609:1-611:25

29. Decl. J. Hernandez ¶ 10-11; Decl. P.  
Swan; Plaintiff's depo. 199:3-22; Decl. M.  
Parrish ¶ 3

1 30. Moreover, the Hawaiian tickets were  
2 listed as "space available" and further  
3 identified as having "no dollar value" and  
4 could not be transferred or redeemed.

5 31. With regard to the football tickets,  
6 ACE parking did not have a contractor or  
7 vendor agreement of any sort with the  
8 Authority.

9 32. Hernandez had a longstanding  
10 friendship with the ACE Parking manager  
11 who invited him to the game which preceded  
12 Hernandez' employment with the Authority.  
13 They were friends from Hernandez' prior  
14 employment relationship with ACE Parking.

15 33. During Swan's interviews with  
16 Hernandez, he expressed no interest in the  
17 fact that Parrish and Hernandez were close  
18 personal friends.

19 34. He avoided discussion of the  
20 tendency of other employees such as  
21 Bowens and Sexton to make active and  
22 aggressive use of their positions to acquire  
23 ticketing upgrades and benefits worth  
24 thousands of dollars.

25 35. When Hernandez attempted to  
26 explain these friendships and practices,  
27 Swan cut him off and would state that he  
28 was not interested in the nature of those  
friendships and what the office practice was.

36. Hernandez had previously received  
outstanding performance evaluations.

37. The Authority did, in fact, have a  
progressive disciplinary policy set forth in  
writing, which emphasizes the Authority's  
commitment to preserve employment  
through pre-termination warnings and  
training.

38. That the Authority failed to adhere to  
this policy and instead routed the matter to  
an expensive and contentious law firm is a  
truly extraordinary decision.

30. Decl. J. Hernandez ¶ 10-11; Decl. P.  
Swan; ; Plaintiff's Depo. 280:15-20, 23-25;  
281:1-2; Decl. M. Parrish par. 3

31. Decl. J. Hernandez ¶ 12; Decl. P.  
Swan; Plaintiff's Depo. 268:1-4; 272:5-9

32. Decl. J. Hernandez ¶ 12; Decl. P.  
Swan

33. Decl. J. Hernandez ¶ 13

34. Decl. J. Hernandez ¶ 13

35. Decl. J. Hernandez ¶ 13

36. Decl. J. Hernandez ¶ 14; Plaintiff's  
Depo. 786:9-18

37. Decl. J. Hernandez ¶ 14; Plaintiff's  
Depo. 317:14-16

38. Decl. J. Hernandez ¶ 14



- 1 39. Ace Parking did not have a direct  
2 service agreement with the Airport  
3 Authority. Ace did not have any sort of a  
4 business relationship with the Airport  
5 Authority.  
6  
7 40. Ted Sexton, Vice-President of  
8 Operations at the Authority, requested  
9 Hernandez obtain Ace Parking passes for  
10 Authority employees. The Authority did not  
11 pay for the Ace passes.  
12  
13 41. Ted Sexton told Hernandez it would  
14 be okay to go to the Southwest Airline Golf  
15 Tournaments. Sexton knew he was a guest  
16 of Southwest's.  
17  
18 42. Hernandez had absolutely never  
19 received free food from the concessions in  
20 the Airport terminals.  
21  
22 43. To this day Hernandez still stands by  
23 the fact that most of the items on the  
24 conflict-of-interest state form should not  
25 have been disclosed.  
26  
27 44. Ted Sexton told Hernandez to write  
28 everything on the form, whether he thought  
it proper to do so or not.  
45. Ted Sexton told Hernandez to report  
any Ace Parking item, even though Ace does  
not have a direct service agreement with the  
Authority Parking.  
46. Sexton told Hernandez if he did not  
put this information on the form there would  
be ramifications. There would be legal  
ramifications whether Hernandez did it or  
not, whether he believed it was right or  
wrong.  
47. Sexton spoke on behalf of the  
Airport Authority, not as an individual.  
Sexton said people at the vice-president  
level would be looking at that  
documentation. Whether Hernandez thought  
it was right or not, people would be looking  
to make sure he filled it in.  
48. Hernandez' reason for submitting it  
was threats or intimidation from not only  
Ted [Sexton], but the investigators.
39. Plaintiff's depo. 149:15-20; 150:20-25  
40. Plaintiff's depo. 134:25; 135:11-17  
41. Plaintiff's depo. 158:18-22; 168:5-8, 12-13, 18, 21-24  
42. Plaintiff's depo. 201:16-18  
43. Plaintiff's depo. 284:11-15  
44. Plaintiff's depo. 293:14-20  
45. Plaintiff's depo. 268:1-5; 274:12-14; 267:14-18; 268:8-13  
46. Plaintiff's depo. 268:8-13; 268:19-20; 270:3-7  
47. Plaintiff's depo. 270:14-19; 267:19-25; 270:24-25; 271:1-2; 271:9-11  
48. Plaintiff's depo. 278:15-17



1 49. In late 2004, early 2005, Ace Parking  
2 was not working to take over the parking  
3 contract. It was Scott Jones, as an  
4 individual, trying to buy the shares of  
Maurice Gray. There's a clear distinction.  
This contract is not with Ace Parking. It is  
with Scott Jones, as an individual.

49. Plaintiff's depo. 272:5-6, 6-9

5 50. Hernandez purchased tickets that  
6 were not available to the public for the  
7 Authority's general counsel, Bret Lobner.  
8 The tickets were blocked-out and  
9 unavailable for the box office to sell.  
10 Hernandez told Lobner they were  
11 unavailable to the public. Ted Sexton told  
12 Hernandez to get the tickets for Lobner.  
13 Hernandez was not already going to the  
14 stadium to purchase tickets that day.

50. Plaintiff's depo. 237:17-25; 238:10-  
12, 13-16, 17-22, 23-25; 240:5-10, 15-23;  
242:19-25; 249:18-25; 250:1

11 51. Clifforine Massey was an unreliable  
12 and undependable employee who refused to  
13 come to work. She was repeatedly  
14 counseled by Hernandez and placed on a  
disciplinary work plan by Human Resources.  
Massey refused to abide by the work plan  
and quit.

51. Plaintiff's depo. 315:13-25; 316:1-  
25; 317:1-2; 318:1-25

15 52. Jim Prentice was a gossip who  
16 reported to Sexton. Prentice stirred-up  
17 gossip and chaos. He was an unreliable and  
18 undependable employee. Sexton referred to  
19 him as "that little shit."

52. Plaintiff's depo. 323:17-25; 324:9-  
25; 542:6-25; 543:1-25; 544:1-5

20 53. The restroom project was stalled  
21 from 2002 through 2005 because V.P. Bryan  
22 Enarson was unwilling to request the  
23 redaction of 30 sq. ft. from Host. It still  
hasn't been built.

53. Plaintiff's depo. 341:9-13; 347:8-9

24 54. It was V.P. Enarson's unwillingness  
25 to take that space away that made it  
26 impossible for the Authority to comply with  
27 ADA requirements of a 2% grade from the  
28 floor up to the restrooms and then landing  
requirements.

54. Plaintiff's depo. 343:20-25; 344:1

24 55. Hernandez raised the ADA issues  
25 with Sexton. He briefed it time and time  
26 and time again to Ted, sometimes even on a  
27 daily, sometimes on a weekly, basis.  
28 Hernandez raised the ADA issue with  
Sexton because it was his number one  
priority. He raised the issue with Ted 50 to  
100 times over a two-year period.

55. Plaintiff's depo. 354:6-9; 357:13, 17-  
18; 359:19-24; 373:3-23

1 56. Sexton was afraid to bring up the  
2 issue to Bryan Enarson. He just didn't want  
to deal with him.

56. Plaintiff's depo. 374:2-4

3 57. Hernandez told Sexton the Authority  
4 was paying too much for the General  
Dynamics property. They would lose a  
5 couple million dollars, which would come  
out of the general budget and affect the  
6 terminal operations. This was prior to the  
ratification of the agreement.

57. Plaintiff's depo. 393:4-24

7 58. Ted Sexton said Thella was willing  
8 to overpay for that property so that she  
didn't have to be under the control of the  
Port District.

58. Plaintiff's depo. 394:17-25

9 59. At every budget meeting it would  
10 come back up that they needed to make an  
adjustment for the \$2 million additional  
11 lease payments on the General Dynamics  
lease.

59. Plaintiff's depo. 397:3-7

12 60. Hernandez told Ted Sexton that the  
13 Authority had paid too much and he didn't  
believe it was right or was in the Authority's  
14 best interest that it pay those type of rents on  
the property.

60. Plaintiff's depo. 399:3-8

15 61. The Authority put together a  
16 Teledyne Ryan redevelopment plan and  
noticed more and more and more  
17 environmental concerns to the point that it  
was close to \$30 million in remediation  
18 costs.

61. Plaintiff's depo. 407:23-25; 408:1-2

19 62. As a public entity, it is necessary to  
20 make sure that what is paid can be recovered  
because it's not just Authority funds, it's  
21 airline funds. Proper due diligence must be  
followed when in agreeing to enter into an  
22 extended lease in this manner. When the  
Authority's own environmental assessments  
23 were done, those numbers greatly shot  
through the roof.

62. Plaintiff's depo. 408:17-25; 410:1-2

24 63. Hernandez had continuing  
25 conversations with Ted Sexton because the  
Authority overpaid for the property and he  
26 wanted to understand why the Authority  
would continue to pay \$3 million for the  
27 whole property when he could use only 5  
acres of it.

63. Plaintiff's depo. 410:3-25

28

1 64. Hernandez was a vocal opponent  
2 because he was coupled with overpayment  
3 on the General Dynamics side and now add  
4 that to one overpayment on Teledyne Ryan.  
5 And now the Authority is in the hole  
6 between \$3 and \$4 million a year in  
7 overpayment on two leases. Entering into a  
8 66-year agreement for \$3 million a year is  
9 almost \$200 million.

64. Plaintiff's depo. 417:13-22; 418:3-10

6 65. The cost for remediation is \$30  
7 million with the settlement requiring the  
8 Port to pay \$9.7 million, with the Port  
9 having the ability within the \$9.7 million to  
10 recover expenses incurred against that  
11 money.

65. Plaintiff's depo. 424:19-23; 427:7-12

10 66. Today that property is used for only  
11 350 parking spaces for which the Authority  
12 pays the \$3 million. The property will not  
13 be remediated by 2010; it won't happen. It  
14 will not be remediated in whole by 2010.

66. Plaintiff's depo. 466:19-20; 468:18-  
19; 469:1-2; 469:23-25; 470:3-5

12 67. Hernandez had ongoing  
13 conversations with Ted Sexton about his  
14 objections to the Authority's failure to  
15 properly assess the environmental aspects  
16 prior to entering the lease agreement and  
17 without understanding the full effects on the  
18 Authority's operating budget. There were  
19 many conversations with Sexton.

67. Plaintiff's depo. 470:16-25; 471:7-11

17 68. LPI submitted an operating figure of  
18 \$1.1 million and the Authority understood  
19 those actual operating expenses would be  
20 about a half a million dollars more a year.  
21 Hernandez told Ted Sexton immediately  
22 that there was a large variation between their  
23 submitted operating expenses and actual  
24 expense numbers.

68. Plaintiff's depo. 478:16-22; 481:1-4;  
482:9-21; 494:2-25

21 69. LPI double-billed the Authority for  
22 workers' compensation costs starting in  
23 2000 and again in 2005.

69. Plaintiff's depo. 500:18-24

23 70. The Authority took credit for the  
24 double-billing. It was around the beginning  
25 of 2005. The Authority took full credit for  
26 those LPI expenses and it was easily over  
27 \$100,000.00.

70. Plaintiff's depo. 502:8-25; 504:1-2;  
508:7-13

26 71. Hernandez kept Ted Sexton  
27 informed.

71. Plaintiff's depo. 501:5-8; 502:20-21;  
514:13-25; 515:5-10

28

PL'S SEP. STATEMENT OF ADDIT. UNDISPUTED MATERIAL FACTS IN OPPOS. TO SDCRAA'S MSJ

- 10 -

1 72. Maurice Grey (LPI's owner) signs  
2 the expense documents to the Authority  
under penalty of perjury.

3 73. Ted Sexton requested that Hernandez  
4 upgrade Thella's flight multiple times at no  
charge to Thella.

5 74. Hernandez requested ticket changes  
6 for Thella Bowens over five times. He did  
7 no less than five different itinerary changes,  
8 plus date changes and time changes. The  
9 airlines' charges for itinerary and date  
10 changes range between \$50 to \$100 per  
11 boarding document. Thella Bowens was not  
12 charged by the airlines for the changes.  
13 Thella could have changed her tickets by  
14 simply calling reservations.

15 75. Ted Sexton instructed Hernandez  
16 that he should get Thella access to premier  
17 airline lounges so she wouldn't have to wait  
18 in the public waiting rooms. Sexton  
19 requested that even for the briefest moments  
if the plane was late to have Thella sit in the  
lounge.

20 76. Ted Sexton asked if special  
21 privileges could be obtained for Thella  
22 Bowens' sister.

23 77. Authority board member Morris  
24 Vance requested and received at least two  
25 upgrades to first class and there were no  
26 charges. He requested several other first-  
27 class upgrades and paid no charges for  
28 upgrades or flight changes.

78. Authority Vice-President Vernon  
Evans repeatedly requested changes in flight  
schedules no less than 15-20 times in the last  
two years. Ted Sexton told Hernandez to  
"do whatever you can." Sexton knew the  
changes were at no cost. Hernandez asked  
Sexton if it was okay to change Evans'  
tickets at the time.

79. Thella Bowens requested two free  
airline tickets from Hawaiian Airlines and  
from Southwest Airlines because she was on  
the board of United Way. The tickets were  
all donated to the Authority.

72. Plaintiff's depo. 506:10-23

73. Plaintiff's depo. 544:15-20; 545:1-  
25; 546:1-25; 547:1-2; 548:2-25; 549:1-7;  
549:14-22

74. Plaintiff's depo. 550:15-551:1, 6-8;  
551:21-22; 554:1-10

75. Plaintiff's depo. 556:19-23; 558:18-  
24; 559:2-7

76. Plaintiff's depo. 561:1-25

77. Plaintiff's depo. 595:25; 596:10-12;  
599:1-6; 599:25; 600:3

78. Plaintiff's depo. 604:5-11; 604:12-  
25; 605:18-23; 607:8-12; 608:6-10; 609:8-  
18; 610:1-13; 612:17-21

79. Plaintiff's depo. 619:12-17; 619:22-  
23; 620:19-21; 621:9-11

1 80. There was a power struggle between  
2 Bryan Enarson and Ted Sexton. Enarson  
3 had more control and had one ear of Thella  
4 Bowens'.

80. Plaintiff's depo. 645:19-25; 646:1-2

5 81. Authority Vice-President Bryan  
6 Enarson requested free tickets, upgrades and  
7 special privileges from Hawaiian Airlines.

81. Plaintiff's depo. 687:4-15

8 **Adjudication No. 1: Hernandez' First Cause of Action fails as a matter of law because the**  
9 **Authority's Codes are not a Federal or State law, rule or regulation.**

10 This is not a proper issue for determination as a "summary adjudication" but an argument  
11 in favor of the adjudication of the first cause of action. The legal importance of the argument is  
12 accordingly addressed in Hernandez' points and authorities. Additional facts relevant to the  
13 evaluation of this argument are as follows:

14 **PLAINTIFF'S ADDITIONAL**  
15 **UNDISPUTED FACTS**

**PL'S SUPPORTING EVIDENCE**

16 5. One of Hernandez' duties was the  
17 evaluation of a lease from the Port of  
18 property located on the north side of the  
19 Airport (General Dynamics property). The  
20 lease price contemplated the use of the  
21 property for parking, and revenues which  
22 would generate to the lease holder for 2100  
23 stalls.

5. Decl. J. Hernandez ¶ 2, Plaintiff's  
depo. 387:11-21, 389:15-17, 396:1-8

24 6. Hernandez' understanding of the  
25 lease was that the lease price was set by code  
26 for the years 2003, 2004 and 2005, and was  
27 thereafter subject to renegotiation.

6. Decl. J. Hernandez ¶ 2; PUC §  
170056(f)(1-3); Plaintiff's depo. 396:1-8;  
397:8-11

28 7. Hernandez conducted an evaluation  
of the cash flow of the property when the  
lease came up for renegotiation, and  
determined that deficiencies in the property  
prevented from generating sufficient revenue  
to cover the lease price by at least \$2 million  
per year. The deficiency centered on the  
discovery of toxic waste in the soil beneath  
the property which severely limited the  
development of the property for parking.

7. Decl. J. Hernandez ¶ 2; Plaintiff's  
depo. 397:3-7

1 10. Another of Hernandez' duties was  
2 the evaluation of a lease from the Port of  
3 property located at the west side of the  
4 Airport. (The Teledyne Ryan property) The  
5 lease of that property likewise contemplated  
the generation of revenues to cover the lease  
through its use as a parking lot. The lease  
had been negotiated by Enarson and was not  
subject to renegotiation.

6 11. Hernandez discovered this property  
7 was likewise contaminated by toxic waste  
and only a small portion of it was usable.

8 12. The contamination was grossly  
9 understated by the Port as a \$10 million  
10 expense (which the Port agreed to pay) when  
the real cost of remediation was in excess of  
\$30 million.

11 14. Another of Hernandez' duties was to  
12 oversee the construction and/or maintenance  
13 of public facilities at the terminals, including  
14 public restrooms. Hernandez attempted to  
15 expand the size of the public restrooms to  
16 alleviate overcrowding in the east terminal  
and bring them into compliance with the  
state requirements that they be accessible by  
wheel chair, as required by the Americans  
with Disabilities Act (ADA).

17 15. He needed to annex 30 sq. ft. space  
18 from a concessionaire in order to comply  
19 with ADA requirements, but was told he  
could not do so by Enarson because Enarson  
had made handshake agreements with the  
concessionaires.

20 17. Another of Hernandez' duties was to  
21 help negotiate and monitor contracts for the  
22 management of parking services. The low  
23 bidder (based on "projected" reimbursable  
24 expenses) on a contract to manage the  
25 Airport's parking lots was Lindbergh  
26 Parking Incorporated (LPI).  
27  
28

10. Decl. J. Hernandez ¶ 4; Plaintiff's  
depo. 388:8-12

11. Decl. J. Hernandez ¶ 4; Plaintiff's  
depo. 389:19-22, 390:3-5, 396:20-25

12. Decl. J. Hernandez ¶ 4; Plaintiff's  
depo. 407:2-408:2, 409:3-6

14. Decl. J. Hernandez ¶ 5; Plaintiff's  
depo. 349:23-350:5, 352:3-353:8, 336:20-  
21, 337:17-19

15. Decl. J. Hernandez ¶ 5; Plaintiff's  
depo. 333:10-17, 335:4-8, 339:6-8, 336:20-  
21, 343:20-25

17. Decl. J. Hernandez ¶ 6



18. Its bid was so low that Hernandez—who had managed parking himself—suspected the bid was insincere. He thereafter closely monitored the performance of the contract and noted LPI was overcharging the Authority approximately \$1 million to 1.5 million per year. This estimate was based, among other things, on the fact that LPI (1) did not lease new shuttle transportation vehicles as stated in its bid (but instead used older shuttles owned by LPI); (2) was seeking reimbursement for an unnecessary management position (owner/manager being paid for management work he did not perform); and (3) double-billing the Authority for workers' compensation insurance.

18. Decl. J. Hernandez ¶ 6; Plaintiff's Depo. 478:16-22; 481:1-4; 483:2-6

20. The negotiating agent on behalf of LPI—Elizabeth Stump-Moore—was, however, a friend of Bowens'.

20. Decl. J. Hernandez ¶ 7; Plaintiff's Depo. 488:25; 489:19-25; 490:10-15

**Adjudication No. 2: Hernandez' First Cause of Action fails as a matter of law because Hernandez could not have had a reasonable belief that he was disclosing activity made unlawful by a federal or state law, rule or regulation.**

This is not a proper issue for determination as a "summary adjudication" but an argument in favor of the adjudication of the first cause of action. The legal importance of the argument is accordingly addressed in Hernandez' points and authorities. Additional facts relevant to the evaluation of this argument are as follows:

**PLAINTIFF'S ADDITIONAL  
UNDISPUTED FACTS**

**PL'S SUPPORTING EVIDENCE**

5. One of Hernandez' duties was the evaluation of a lease from the Port of property located on the north side of the Airport (General Dynamics property). The lease price contemplated the use of the property for parking, and revenues which would generate to the lease holder for 2100 stalls.

5. Decl. J. Hernandez ¶ 2, Plaintiff's depo. 387:11-21, 389:15-17, 396:1-8

6. Hernandez' understanding of the lease was that the lease price was set by code for the years 2003, 2004 and 2005, and was thereafter subject to renegotiation.

6. Decl. J. Hernandez ¶ 2; PUC § 170056(f)(1-3); Plaintiff's depo. 396:1-8; 397:8-11



1 7. Hernandez conducted an evaluation  
2 of the cash flow of the property when the  
3 lease came up for renegotiation, and  
4 determined that deficiencies in the property  
5 prevented from generating sufficient revenue  
6 to cover the lease price by at least \$2 million  
7 per year. The deficiency centered on the  
8 discovery of toxic waste in the soil beneath  
9 the property which severely limited the  
10 development of the property for parking.

11 10. Another of Hernandez' duties was  
12 the evaluation of a lease from the Port of  
13 property located at the west side of the  
14 Airport. (The Teledyne Ryan property) The  
15 lease of that property likewise contemplated  
16 the generation of revenues to cover the lease  
17 through its use as a parking lot. The lease  
18 had been negotiated by Enarson and was not  
19 subject to renegotiation.

20 11. Hernandez discovered this property  
21 was likewise contaminated by toxic waste  
22 and only a small portion of it was usable.

23 12. The contamination was grossly  
24 understated by the Port as a \$10 million  
25 expense (which the Port agreed to pay) when  
26 the real cost of remediation was in excess of  
27 \$30 million.

28 14. Another of Hernandez' duties was to  
oversee the construction and/or maintenance  
of public facilities at the terminals, including  
public restrooms. Hernandez attempted to  
expand the size of the public restrooms to  
alleviate overcrowding in the east terminal  
and bring them into compliance with the  
state requirements that they be accessible by  
wheel chair, as required by the Americans  
with Disabilities Act (ADA).

15. He needed to annex 30 sq. ft. space  
from a concessionaire in order to comply  
with ADA requirements, but was told he  
could not do so by Enarson because Enarson  
had made handshake agreements with the  
concessionaires.

7. Decl. J. Hernandez ¶ 2; Plaintiff's  
depo. 397:3-7

10. Decl. J. Hernandez ¶ 4; Plaintiff's  
depo. 388:8-12

11. Decl. J. Hernandez ¶ 4; Plaintiff's  
depo. 389:19-22, 390:3-5, 396:20-25

12. Decl. J. Hernandez ¶ 4; Plaintiff's  
depo. 407:2-408:2, 409:3-6

14. Decl. J. Hernandez ¶ 5; Plaintiff's  
depo. 349:23-350:5, 352:3-353:8, 336:20-  
21, 337:17-19

15. Decl. J. Hernandez ¶ 5; Plaintiff's  
depo. 333:10-17, 335:4-8, 339:6-8, 336:20-  
21, 343:20-25

1 17. Another of Hernandez' duties was to  
2 help negotiate and monitor contracts for the  
3 management of parking services. The low  
4 bidder (based on "projected" reimbursable  
expenses) on a contract to manage the  
Airport's parking lots was Lindbergh  
Parking Incorporated (LPI).

17. Decl. J. Hernandez ¶ 6

5 18. Its bid was so low that  
6 Hernandez—who had managed parking  
7 himself—suspected the bid was insincere. He  
8 thereafter closely monitored the performance  
9 of the contract and noted LPI was  
10 overcharging the Authority approximately  
11 \$1 million to 1.5 million per year. This  
12 estimate was based, among other things, on  
13 the fact that LPI (1) did not lease new shuttle  
transportation vehicles as stated in its bid  
(but instead used older shuttles owned by  
LPI); (2) was seeking reimbursement for an  
unnecessary management position  
(owner/manager being paid for management  
work he did not perform); and (3) double-  
billing the Authority for workers'  
compensation insurance.

18. Decl. J. Hernandez ¶ 6; Plaintiff's  
Depo. 478:16-22; 481:1-4; 483:2-6

14 20. The negotiating agent on behalf of  
15 LPI—Elizabeth Stump-Moore—was, however,  
a friend of Bowens'.

20. Decl. J. Hernandez ¶ 7; Plaintiff's  
Depo. 488:25; 489:19-25; 490:10-15

16 **Adjudication No. 3: Hernandez' First Cause of Action fails as a matter of law because**  
17 **there is no causal connection between Hernandez' alleged protected activities and his**  
18 **termination because the disclosures were too remote in time.**

19 This is not a proper issue for determination as a "summary adjudication" but an argument  
20 in favor of the adjudication of the first cause of action. The legal importance of the argument is  
21 accordingly addressed in Hernandez' points and authorities. Additional facts relevant to the  
22 evaluation of this argument are as follows:

23 **PLAINTIFF'S ADDITIONAL**  
24 **UNDISPUTED FACTS**

**PL'S SUPPORTING EVIDENCE**

25 8. Hernandez communicated the  
26 deficiency in the property to Sexton and  
27 Bowens, and that the continuation of the  
28 lease at its existing rate would amount to a  
gift of public money to the Port.

8. Decl. J. Hernandez ¶ 2; Plaintiff's  
depo. 393:6-24

1 13. Hernandez then informed Sexton,  
2 Enarson and Bowens that the lease  
3 constituted an unwarranted expenditure of  
public money to the Port of over \$3 million  
per year.

4 16. He told Sexton, Enarson and Bowens  
5 that he did not believe Enarson had the  
6 authority to enter into such agreements with  
the concessionaires, and that Enarson's  
enforcement of the agreements constituted a  
gift to the concessionaires.

7 19. Hernandez reported these  
8 overcharges to Sexton, Enarson and  
Bowens, in October 2005 and placed LPI on  
9 a 90-day timetable to explain and justify all  
the expenses. He informed Sexton, Enarson  
10 and Bowens that the LPI contract constituted  
an unwarranted expenditure of public money  
11 to LPI.

12 20. The negotiating agent on behalf of  
13 LPI-Elizabeth Stump-Moore-was, however,  
a friend of Bowens'.

14 21. On November 2, 2005, Bowens  
15 engaged a law firm to investigate Hernandez  
for "ethics" violations associated with the  
16 receipt of benefits from the Authority's  
vendors. This was the first occasion in the  
17 history of the Authority that a law firm was  
retained to investigate an employee for  
alleged ethics violations.

18 22. The law firm, per report submitted  
19 by Patrick Swan, Esq., concluded Hernandez  
received (1) free rounds of golf; (2) airline  
20 tickets to Hawaii; and (3) charger football  
tickets, the value of which placed Hernandez  
21 in violation of the Ethics Code applicable to  
Authority employees.

22 23. Bowens claims to have terminated  
23 Hernandez' employment based on the  
conclusions in the report.

24 24. With regard to the "free rounds of  
25 golf," Hernandez cleared the trip with his  
boss, Sexton, before going, after disclosing  
26 the nature of the outing and that the golf  
rounds were supplied by Mike Parrish.

13. Decl. J. Hernandez ¶ 4; Plaintiff's  
depo. 417:14-22, 418:3-10

16. Decl. J. Hernandez ¶ 5; Plaintiff's  
depo. 335:17-18; 336:1; 354:6-9; 368:10-16;  
377:1-4

19. Decl. J. Hernandez ¶ 7; Plaintiff's  
Depo. 505:11-23; 506:10-23; 508:7-13;  
511:16-23

20. Decl. J. Hernandez ¶ 7; Plaintiff's  
Depo. 488:25; 489:19-25; 490:10-15

21. Decl. J. Hernandez ¶ 7; Decl. P.  
Swan ¶ 3

22. Decl. P. Swan

23. Decl. T. Bowens ¶ 9

24. Decl. J. Hernandez ¶ 9; Plaintiff's  
depo. 158:18-22; 168:5-24

1 25. In the process, Sexton admitted he  
2 had attended the same golf outing under  
similar circumstances.

3 26. Hernandez compensated Parrish for  
4 the round by buying Parrish's lunch and  
5 dinner and by making gift contributions for  
the raffle. The net personal value to  
Hernandez was negative by over \$200.

6 27. Hernandez had a strong social  
7 relationship with Parrish, which included  
8 joint family outings and gatherings, dinners,  
barbecues and sporting events.

9 28. With regard to the Hawaii ticket,  
10 ticketing benefits were regarded by  
11 management as normal benefit of their  
12 workplace, and that Sexton assigned  
13 Hernandez responsibility on frequent  
occasions to obtain ticket upgrades for  
various employees and board members.  
Hernandez specifically discussed whether  
the practice was ethically acceptable and  
Sexton replied it was.

14 29. Notwithstanding the practice among  
15 Hernandez' superiors to receive passes and  
16 upgrades, Hernandez' receipt of those  
17 benefits was limited to gifts from personal  
18 friends. The tickets on Southwest came  
19 from Parrish. The tickets on Hawaiian Air  
came from Janet Nix, another personal  
friend, who told him she gave tickets like  
those to all kinds of friends having nothing  
to do with business.

20 30. Moreover, the Hawaiian tickets were  
21 listed as "space available" and further  
identified as having "no dollar value" and  
could not be transferred or redeemed.

22 31. With regard to the football tickets,  
23 ACE parking did not have a contractor or  
24 vendor agreement of any sort with the  
Authority.

25 32. Hernandez had a longstanding  
26 friendship with the ACE Parking manager  
27 who invited him to the game which preceded  
Hernandez' employment with the Authority.  
They were friends from Hernandez' prior  
employment relationship with ACE Parking.

28

25. Decl. J. Hernandez ¶ 9

26. Decl. J. Hernandez ¶ 9; Decl. P.  
Swan; Plaintiff's depo. 159:14-19; 163:3-13;  
164:10-14

27. Decl. J. Hernandez ¶ 9; Decl. P.  
Swan; Decl. M. Parrish par. 2

28. Decl. J. Hernandez ¶ 10-11; Decl. P.  
Swan; Plaintiff's depo. 240:1-25; 602:20-25;  
609:1-611:25

29. Decl. J. Hernandez ¶ 10-11; Decl. P.  
Swan; Plaintiff's depo. 199:3-22; Decl. M.  
Parrish ¶ 3

30. Decl. J. Hernandez ¶ 10-11; Decl. P.  
Swan; ; Plaintiff's Depo. 280:15-20, 23-25;  
281:1-2; Decl. M. Parrish par. 3

31. Decl. J. Hernandez ¶ 12; Decl. P.  
Swan; Plaintiff's Depo. 268:1-4; 272:5-9

32. Decl. J. Hernandez ¶ 12; Decl. P.  
Swan

1 33. During Swan's interviews with  
2 Hernandez, he expressed no interest in the  
3 fact that Parrish and Hernandez were close  
4 personal friends.  
5  
6 34. He avoided discussion of the  
7 tendency of other employees such as  
8 Bowens and Sexton to make active and  
9 aggressive use of their positions to acquire  
10 ticketing upgrades and benefits worth  
11 thousands of dollars.  
12  
13 35. When Hernandez attempted to  
14 explain these friendships and practices,  
15 Swan cut him off and would state that he  
16 was not interested in the nature of those  
17 friendships and what the office practice was.  
18  
19 36. Hernandez had previously received  
20 outstanding performance evaluations.  
21  
22 37. The Authority did, in fact, have a  
23 progressive disciplinary policy set forth in  
24 writing, which emphasizes the Authority's  
25 commitment to preserve employment  
26 through pre-termination warnings and  
27 training.  
28  
38. That the Authority failed to adhere to  
this policy and instead routed the matter to  
an expensive and contentious law firm is a  
truly extraordinary decision.  
39. Ace Parking did not have a direct  
service agreement with the Airport  
Authority. Ace did not have any sort of a  
business relationship with the Airport  
Authority.  
41. Ted Sexton told Hernandez it would  
be okay to go to the Southwest Airline Golf  
Tournaments. Sexton knew he was a guest  
of Southwest's.  
42. Hernandez had absolutely never  
received free food from the concessions in  
the Airport terminals.  
44. Ted Sexton told Hernandez to write  
everything on the form, whether he thought  
it proper to do so or not.

33. Decl. J. Hernandez ¶ 13  
  
34. Decl. J. Hernandez ¶ 13  
  
35. Decl. J. Hernandez ¶ 13  
  
36. Decl. J. Hernandez ¶ 14; Plaintiff's  
Depo. 786:9-18  
  
37. Decl. J. Hernandez ¶ 14; Plaintiff's  
Depo. 317:14-16  
  
38. Decl. J. Hernandez ¶ 14  
  
39. Plaintiff's depo. 149:15-20; 150:20-  
25  
  
41. Plaintiff's depo. 158:18-22; 168:5-8,  
12-13, 18, 21-24  
  
42. Plaintiff's depo. 201:16-18  
  
44. Plaintiff's depo. 293:14-20

1 74. Hernandez requested ticket changes  
2 for Thella Bowens over five times. He did  
3 no less than five different itinerary changes,  
4 plus date changes and time changes. The  
5 airlines' charges for itinerary and date  
6 changes range between \$50 to \$100 per  
7 boarding document. Thella Bowens was not  
8 charged by the airlines for the changes.  
9 Thella could have changed her tickets by  
10 simply calling reservations.

74. Plaintiff's depo. 550:15-551:1, 6-8;  
551:21-22; 554:1-10

11 75. Ted Sexton instructed Hernandez  
12 that he should get Thella access to premier  
13 airline lounges so she wouldn't have to wait  
14 in the public waiting rooms. Sexton  
15 requested that even for the briefest moments  
16 if the plane was late to have Thella sit in the  
17 lounge.

75. Plaintiff's depo. 556:19-23; 558:18-  
24; 559:2-7

18 76. Ted Sexton asked if special  
19 privileges could be obtained for Thella  
20 Bowens' sister.

76. Plaintiff's depo. 561:1-25

21 77. Authority board member Morris  
22 Vance requested and received at least two  
23 upgrades to first class and there were no  
24 charges. He requested several other first-  
25 class upgrades and paid no charges for  
upgrades or flight changes.

77. Plaintiff's depo. 595:25; 596:10-12;  
599:1-6; 599:25; 600:3

26 78. Authority Vice-President Vernon  
27 Evans repeatedly requested changes in flight  
28 schedules no less than 15-20 times in the last  
two years. Ted Sexton told Hernandez to  
"do whatever you can." Sexton knew the  
changes were at no cost. Hernandez asked  
Sexton if it was okay to change Evans'  
tickets at the time.

78. Plaintiff's depo. 604:5-11; 604:12-  
25; 605:18-23; 607:8-12; 608:6-10; 609:8-  
18; 610:1-13; 612:17-21

79. Thella Bowens requested two free  
airline tickets from Hawaiian Airlines and  
from Southwest Airlines because she was on  
the board of United Way. The tickets were  
all donated to the Authority.

79. Plaintiff's depo. 619:12-17; 619:22-  
23; 620:19-21; 621:9-11

80. There was a power struggle between  
Bryan Enarson and Ted Sexton. Enarson  
had more control and had one ear of Thella  
Bowens'.

80. Plaintiff's depo. 645:19-25; 646:1-2

81. Authority Vice-President Bryan  
Enarson requested free tickets, upgrades and  
special privileges from Hawaiian Airlines.

81. Plaintiff's depo. 687:4-15



1 **Adjudication No. 4: Hernandez' First Cause of Action fails as a matter of law because**  
 2 **there is no causal connection between Hernandez' alleged protected activities and his**  
 3 **termination because the decisionmaker was not aware of the protected activities.**

4 This is not a proper issue for determination as a "summary adjudication" but an argument  
 5 in favor of the adjudication of the first cause of action. The legal importance of the argument is  
 6 accordingly addressed in Hernandez' points and authorities. Additional facts relevant to the  
 7 evaluation of this argument are as follows:

8 **PLAINTIFF'S ADDITIONAL**  
 9 **UNDISPUTED FACTS**

**PL'S SUPPORTING EVIDENCE**

10 8. Hernandez communicated the  
 11 deficiency in the property to Sexton and  
 12 Bowens, and that the continuation of the  
 13 lease at its existing rate would amount to a  
 14 gift of public money to the Port.

8. Decl. J. Hernandez ¶ 2; Plaintiff's  
 depo. 393:6-24

13 13. Hernandez then informed Sexton,  
 14 Enarson and Bowens that the lease  
 15 constituted an unwarranted expenditure of  
 16 public money to the Port of over \$3 million  
 17 per year.

13. Decl. J. Hernandez ¶ 4; Plaintiff's  
 depo. 417:14-22, 418:3-10

16 16. He told Sexton, Enarson and Bowens  
 17 that he did not believe Enarson had the  
 18 authority to enter into such agreements with  
 19 the concessionaires, and that Enarson's  
 20 enforcement of the agreements constituted a  
 21 gift to the concessionaires.

16. Decl. J. Hernandez ¶ 5; Plaintiff's  
 depo. 335:17-18; 336:1; 354:6-9; 368:10-16;  
 377:1-4

19 19. Hernandez reported these  
 20 overcharges to Sexton, Enarson and  
 21 Bowens, in October 2005 and placed LPI on  
 22 a 90-day timetable to explain and justify all  
 23 the expenses. He informed Sexton, Enarson  
 24 and Bowens that the LPI contract constituted  
 25 an unwarranted expenditure of public money  
 26 to LPI.

19. Decl. J. Hernandez ¶ 7

24 **Adjudication No. 5: Hernandez' First Cause of Action fails as a matter of law because the**  
 25 **Authority had a legitimate non-retaliatory business reason for terminating Hernandez'**  
 26 **employment.**

27 This is not a proper issue for determination as a "summary adjudication" but an argument  
 28 in favor of the adjudication of the first cause of action. The legal importance of the argument is